

RULES AND REGULATIONS OF THE  
EMPLOYEES' RETIREMENT SYSTEM OF THE  
SEWERAGE AND WATER BOARD OF NEW ORLEANS

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AUTHORIZED BY ACT NO. 551 OF 1956  
AS AMENDED THROUGH BY ACT NO. 683 OF 1995,

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ORIGINALLY ADOPTED BY THE SEWERAGE AND WATER BOARD  
OF  
NEW ORLEANS  
ON  
NOVEMBER 14, 1956

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ORIGINALLY EFFECTIVE: JANUARY 1, 1957  
LAST AMENDED ON JULY 21, 2010  
AND  
RESTATED THROUGH JULY 21, 2010

Revised July 21, 2010
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## **ARTICLE I NAME AND DATE OPERATIVE**

**1.1 Statutory Authority.** The Employees' Retirement System of the Sewerage & Water Board of New Orleans (the "Retirement System") was mandated pursuant to Act No. 551 of 1956, as amended from time to time (La. Rev. Stat. § 11:3821-23 (the "Act")) and shall be operated and administered in accordance with the provisions of that Act or successor provisions as they may be amended from time to time.

**1.2 Establishment and Operation.** In accordance with the Act, the Retirement System was established effective January 1, 1957 and placed under the management of the Pension Committee for the purpose of providing Retirement Allowances and death and other benefits according to the terms of these Rules and Regulations for all officers and Employees of the Board. The funds of the Retirement System shall be held in trust for the exclusive benefit of the Members of the Retirement System and their beneficiaries, as applicable. These Rules and Regulations shall serve as both the plan document and the trust document for the Retirement System.

## **ARTICLE II DEFINITIONS**

**"Accrued Benefit"** means a Retirement Allowance based on the Member's Average Compensation and Credited Service as of the date for which the calculation is made.

**"Accumulated Contributions"** means the sum of all the amounts deducted from the compensation of a Member plus Credited Interest.

**"Active Duty Military Service"** means "military service" as defined in 5 U.S.C. § 8331(13)), and shall not include routine practical instruction, field training, or other exercises performed by a Member for the National Guard or other reserve component of the Armed Forces of the United States, unless that service is performed during a period in which the Member had been called to federal service or active duty within the meaning of 10 U.S.C. § 12401, *et seq.*

**"Active Member"** means a Member who has not terminated employment with the Board prior to Retirement.

**"Actuarial Equivalent"** or the terms of similar import, whenever used in these Rules and Regulations, means a benefit of equivalent actuarial value as computed by the actuary, based on the 1971 Group Annuity Mortality Table (The male Table being

used for all Participants, and the female Table for their Beneficiaries, regardless of the actual sex of the Member or Beneficiary) at six percent (6%).

**"Annual Additions"** means the sum of the following amounts credited to a Member's account for the Limitation Year.

(a) Employer Contributions;

(b) Member Contributions;

(c) forfeitures;

(d) amounts allocated after March 31, 1984, to an individual medical account that is part of a pension or annuity plan maintained by the Employer are treated as Annual Additions to a defined contribution plan. Also, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date that are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code Section 419A(d)(3)) under a welfare benefit fund are treated as Annual Additions to a defined contribution plan; and

(e) allocations under a simplified employee pension.

**"Applicable Mortality Table"** shall mean the table or tables prescribed in Code Section 415(b)(2)(E)(v).

**"Average Compensation"** means the average Earnable Compensation of an Employee determined by reference to the period of thirty-six (36) consecutive months of service as an Employee during which the Earnable Compensation was the highest. If during a thirty-six (36) month calculation period, an Employee is not receiving any Compensation from the Sewerage and Water Board, the period during which no Compensation is received shall not be considered in determining an Employee's Average Compensation. The Employee's average Earnable Compensation shall be based on a period of thirty-six (36) successive months of service during which the Employee received Compensation. The Employee must delete any months during which the Employee received no Compensation. If those months fall within the thirty-six (36) successive months of service, additional months shall be added, to either end, so that, for all purposes, a thirty-six (36) successive month period of service is used to calculate Average Compensation. The Pension Committee's decision as to this calculation shall be final and conclusive.

**"Beneficiary"** means the person or persons designated in writing by the Member, to receive benefits on the Member's death in accordance with these Rules and Regulations. Each Member shall have the right to designate and from time to time change the designation of such Beneficiary, but no such designation or change of designation shall be effective unless the same is in writing and filed with the Personnel

Department. If a Member dies and does not have a designated beneficiary or if his designation has been determined to be invalid by the Pension Committee, the Pension Committee shall direct the benefit to be paid to the member(s) of the first of the following classes in which there is at least one member living at the time of the Member's death: (1) the spouse of the Member, providing he or she is not legally separated from the Member at the time of his or her death, (2) children, including legally adopted children, (3) parents, (4) brothers and/or sisters, or (5) the estate of the Member. Where there are two or more members in a class entitled to benefits, then each such member shall share the benefit equally. If a minor child or children is determined to be the beneficiary, all benefits to which they are entitled shall be paid to the legally appointed guardian.

**"Board"** means the Sewerage and Water Board of the City of New Orleans.

**"Board of Trustees"** means the members of the Board, the three (3) elected Employee Members of the Pension Committee, and the one (1) Retiree member of the Pension Committee.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Credited Interest"** means interest at such percentage rate compounded annually as is determined from time to time by the Board. Such rate shall be two percent (2%) compounded annually until it is changed by the Board.

**"Credited Service"** means service for which a Member is entitled to receive a Retirement Allowance, Disability Retirement Allowance, or separation retirement allowance, as defined in Article VI.

**"Direct Rollover"** means a payment by the Retirement System to the Eligible Retirement Plan specified by the Distributee.

**"Disabled"** means having a **"Disability"**, i.e., a physical or mental impairment that may be expected to result in death or to be of a permanent and continuous duration, and which renders the individual totally incapacitated for the further performance of his present job or any other job duty for which he is reasonably suited and/or trained to perform. A dependent child who is not employed or self-employed will be considered Disabled if, because of injury or sickness, the individual is unable to engage in the normal activities of a person of the same age and sex. However, an individual will not be considered Disabled if the impairment was in no way contracted or incurred as the direct or indirect result of:

- (a) Service the armed forces of any country,
- (b) Engaging in a felony,

(c) The illegal use of narcotics or other controlled or illegal substances,  
or

(d) An intentional self-inflicted injury or attempted suicide.

Disability is determined by in the opinion of a licensed physician selected by the Pension Committee. The date of Disability shall be the earliest date from which the Pension Committee can determine that such Disabled condition has continuously existed to the date of application for Disability benefits.

**"Disability Retirement Allowance"** means the retirement benefit to which a Member is entitled under Section 6.2.

**"Distributee"** includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are "Distributees" with regard to the interest of the spouse or former spouse.

**"Distribution Calendar Year"** means a calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Subsection 6.9(d).

**"DROP"** means the Deferred Retirement Option Plan set forth in Article VII.

**"Earnable Compensation"** means:

(a) The regular annual compensation paid to an Employee, which shall not include on-call pay, stand-by pay, or over-time. For computing Retirement benefits only, Earnable Compensation includes shift differential pay and longevity pay as part of an Employee's base pay.

(b) Notwithstanding the foregoing, effective January 1, 1996, Earnable Compensation of each Member taken into account for determining all benefits provided under the Retirement System for any determination period shall not exceed the limits set forth under Code Section 401(a)(17) as adjusted each year and as applicable to governmental plans. Such limit shall be \$150,000 for the Plan Year beginning January 1, 1996 and shall be adjusted annually in accordance with Code Section 401(a)(17), as applicable to governmental plans. The determination period is the calendar year. If the determination period includes a fraction of a calendar year, the annual compensation limit is the otherwise applicable annual limit multiplied by a fraction, the numerator of which



is the number of months in the short year and the denominator of which is twelve (12).

Notwithstanding the foregoing, for any Plan Year beginning after December 31, 2001, Earnable Compensation of each Member shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17), as applicable to governmental plans.

**"Eligible Dependent"** means a dependent who is a child of a Member, either natural or adopted, and who is under age eighteen (18) (age 25 if the child attends school full-time) or who is mentally or physically disabled, as determined by the Pension Committee in its sole discretion, provided such disability occurred before the date the child reached age eighteen (18).

**"Eligible Rollover Distribution"** means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includible in gross income. For distributions made after December 31, 2001, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b) or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

**"Eligible Retirement Plan"** means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the Distributees Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity. For distributions made after December 31, 2001, Eligible Retirement Plan also shall mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Retirement System. This definition also shall apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the "alternate payee" under a qualified domestic relations order, as defined in Code Section 414(p).

**"Employee"** means any officer or other individual who the Personnel Department classifies as an Employee of the Board. The term Employee for purposes of the Retirement System does not include an individual who the Personnel Department classifies as an individual who regularly works less than 17.5 hours per week, a contract employee, a transient employee, a temporary employee (no matter how long the individual works with the Board), an emergency appointment, an independent contractor, or an employee of a contractor or independent contractor. In all cases of doubt, the Pension Committee shall have the authority to decide who is an "Employee" for purposes of this Retirement System, and its decision shall be final. These groups of individuals are excluded from the Retirement System based on the Pension Committee's classification even if the Internal Revenue Service or any other agency or court determine that the Pension Committee's classification was incorrect or reclassified that individual as an employee for employment tax or any other purpose.

**"Fund"** means the assets of the Retirement System, which are held in trust pursuant to the terms of these Rules and Regulations for the exclusive benefit of the Retirement System, its Members and their Beneficiaries.

**"Inactive Member"** means a Member who terminated employment with the Board and whose Accumulated Contributions remain on deposit with the Retirement System.

**"Life Expectancy"** means the life expectancy (or joint and last survivor expectancy) calculated using the attained age of the Member (or designated Beneficiary) as of the Member's (or designated Beneficiary's) birthday in the applicable calendar year. The applicable calendar year shall be the first distribution calendar year. If annuity payments commence before the Required Beginning Date, the applicable year is the year such payments commence. Life Expectancy and joint and last survivor expectancy are computed by use of the expected return multiples in Tables V and VI of Section 1.72-9 of the Income Tax Regulations.

**"Limitation Year"** means the calendar year.

**"Member"** means any person included in the membership of the Retirement System as provided in Sections 4.1 and 4.2.

**"Normal Retirement Age"** means age 65.

**"Pension Accumulation Account"** means the bookkeeping account reflecting all contributions and income other than contributions by Members.

**"Pension Committee"** means the Pension Committee provided for in Article III to administer the Retirement System.

**"Personnel Department"** means the Personnel Department of the Board.

**"Plan Year"** means the calendar year beginning each January 1 and ending the following December 31.

**"Projected Annual Benefit"** means the Annual Benefit to which the Member would be entitled under the Rules and Regulations assuming:

(a) The Member will continue employment until Normal Retirement Age (or current age, if later), and

(b) The Member's Compensation for the current Limitation Year and all other relevant factors used to determine benefits under the Retirement System will remain constant for all future Limitation Year.

**"Regular Employee"** means any Employee as defined in this Plan, other than (i) an Employee that has elected to participate in the Deferred Retirement Option Plan as described in Article VII or (ii) an individual that does meet the definition of Retiree.

**"Required Beginning Date"** means the first day of April of the calendar year following the calendar year in which the Member retires or reaches age seventy and one-half (70 ½), whichever is later.

**"Retire"** means the Member terminates employment and begins to receive a Retirement Allowance or Disability Retirement Allowance.

**"Retiree"** means an individual who is receiving a Retirement Allowance or Disability Retirement Allowance.

**"Retirement"** means that the Member terminates employment with the Board and commences receiving a Normal Retirement Allowance or Disability Retirement Allowance.

**"Retirement Allowance"** means the retirement benefit to which a Member is entitled under Section 6.1.

**"Retirement System"** means the Employees' Retirement System of the Sewerage and Water Board of New Orleans, as defined in Article 1.

**"Rules and Regulations"** means this document, which establishes the plan of benefits and the rules governing the Retirement System and which also serves the trust document for the Retirement System.

**"Vested"** means the earlier of the date that the Member (i) has five or more years of Credited Service or (ii) has attained Normal Retirement Age.

### **ARTICLE III**

#### **ADMINISTRATION - PENSION COMMITTEE AND TRUSTEE**

**3.1 Pension Committee's Authority.** The responsibility for the proper operation and administration of the Retirement System and for making effective the provisions of these Rules and Regulations is vested in the Pension Committee, which is the Plan Administrator.

(a) The Pension Committee shall administer the Retirement System in accordance with these Rules and Regulations.

(b) The Pension Committee shall have all powers necessary to carry out the provisions of these Rules and Regulations.

(c) The Pension Committee shall act solely in the interest of the Retirement System's Members and Beneficiaries, and exclusively to provide benefits to the Members and Beneficiaries.

(d) If there is an ambiguity or any interpretation necessary, the Pension Committee shall have the sole and exclusive discretion and power to construe that part needing construction. Such discretionary authority shall include, but not be limited to, the power to construe and interpret any disputed or doubtful terms as well to interpret these Rules and Regulations as well as any additional rules and regulations adopted by the Board of Trustees to effect the intended purposes of this Retirement System.

(e) The Pension Committee shall have the discretionary authority to determine all questions of eligibility for participation in and for benefits under the Retirement System.

(f) No finding, decision, and/or determination of any type made by the Pension Committee shall be disturbed unless the Pension Committee has acted in an arbitrary and/or capricious manner. Any such determination by the Committee shall be conclusive and binding on all persons except as otherwise provided in these Rules and Regulations.

(g) Nothing in these Rules and Regulations shall be deemed to prevent the Pension Committee from exercising its powers within such limits or discretion as would be applied by reasonable and prudent individuals under similar circumstances.

**3.2 Pension Committee Composition.** The Pension Committee shall be composed of:

(a) The Chairperson of the Executive Committee;

- (b) The Chairperson of the Finance Committee;
- (c) Three (3) other members of the Board to be appointed by the President or the President Pro Tem of the Board;
- (d) Three (3) Members of the Retirement System who are Regular Employees elected by their fellow Regular Employees; and
- (e) One (1) Retiree from the Retirement System who is elected by his fellow Retirees and by Employees who have elected to participate in the DROP Program.

The members of the Pension Committee shall serve without compensation but they shall be reimbursed by the Board for all necessary expenses that they may incur through service on the Pension Committee.

**3.3 Terms of Members of the Pension Committee.** The terms of the three (3) Employee and the one (1) Retiree member of the Pension Committee shall be four years at staggered one-year intervals beginning on each September 1. The term of an Employee or Retiree Member of the Pension Committee shall expire before the end of the term for which he or she is elected, if he or she resigns or dies. In the case an Employee member of the Pension Committee, ceases to be a Regular Employee of the Board and either retires, or elects to participate in the DROP Program, he or she shall serve his or her full elected term. If that Member wishes to stand for election subsequent to the completion of his or her term, he or she can only stand for election for the category corresponding to the employment position on the Pension Committee that he or she holds at the time of election. This is also true for all individuals standing for election for a position on the Pension Committee. Should the term of an Employee or Retiree member of the Pension Committee cease before the end of the term for which he or she is elected, a successor shall be elected for the remainder of the term for which that former member of the Pension Committee was elected.

#### **3.4 Pension Committee Officers and Meetings.**

- (a) The Chairperson of the Executive Committee and the Chairperson of the Finance Committee of the Board shall be Chairperson and Vice-Chairperson, respectively, of the Pension Committee.
- (b) Five (5) members shall constitute a quorum of the Pension Committee.
- (c) The regular monthly meeting of the Pension Committee shall be fixed by the Pension Committee.
- (d) Special meetings:

(1) May be called by the Chairperson; or

(2) Shall be called on the written request of three (3) members of the Pension Committee.

(e) A written notice stating the object, the time, and the place of every meeting of the Pension Committee shall be served on each member of the Pension Committee by the Executive Director of the Board.

(f) Each member of the Pension Committee shall be entitled to one (1) vote. A majority vote by those present at any meeting of the Pension Committee shall be necessary for a decision.

(g) The Pension Committee shall prepare on a calendar year basis an annual report which shall show fiscal transactions of the Retirement System for the preceding year, the Fund's assets, and the actuarial valuation of the liabilities of the Fund.

### **3.5 Retirement System Officers and Duties.**

(a) The Executive Director of the Board (or his delegee) shall be the Secretary-Treasurer of the Retirement System.

(b) Such data as shall be necessary for actuarial valuation of the assets and liabilities of the Fund and for checking the actuarial experience of the Fund shall be kept in convenient form by the Secretary-Treasurer of the Retirement System (or his delegee).

(c) The Special Counsel of the Board shall be the Attorney for the Retirement System; however, the Board shall have the right to retain legal counsel, as well as any other legal personnel that may be necessary for the administration of the Retirement System. The Board of Trustees shall have the right to select and retain legal counsel or other legal personnel involving issues beyond the normal administration of the Retirement System and may obtain the recommendation of the Pension Committee with respect to the need for and selection of legal counsel or other legal personnel.

### **3.6 Authority and Responsibilities of the Board of Trustees.**

(a) The Board of Trustees may employ such personnel as may be necessary for the proper administration of this Retirement System. The Board of

Trustees may obtain the recommendation of the Pension Committee with respect to this provision but shall not be bound to follow any such recommendation.

(b) Subject to the limitations in these Rules and Regulations, the Board of Trustees may establish such rules and regulations as may be necessary for the administration of the Retirement System. The Board of Trustees may obtain the recommendation of the Pension Committee with respect to this provision but shall not be bound to follow any such recommendation.

(c) The Board of Trustees shall designate an actuary who shall be the technical advisor of the Board of Trustees in matters regarding the cost to maintain the Retirement System on a sound actuarial basis, and who shall perform such other duties as are required in connection therewith.

(1) Annually, the actuary shall make an actuarial valuation of the Retirement System and shall make the necessary investigation of the mortality, service and compensation experience of the Members, and on the basis of such investigation shall recommend to the Board of Trustees such tables and such rates as are required for the proper operation of the Retirement System.

(2) The Board of Trustees shall adopt such mortality, service and other tables for the Retirement System as shall be deemed necessary, and certify the rates of contribution payable under the provisions of these Rules and Regulations. On the basis of such tables, the actuary shall make annually an actuarial valuation of the assets and liabilities of the Retirement System.

**3.7 Reliance.** The Board of Trustees shall be entitled to rely on:

(a) all tables, valuations, certificates and reports furnished by the actuary,

(b) all certificates and reports made by any accountant selected by the Board of Trustees, and

(c) all opinions given by Special Counsel of the Board and any legal counsel selected by the Board or the Board of Trustees.

**3.8 Claims and Appeals.** All applications, claims, or notices of whatever nature shall be in writing. If the Personnel Department or Pension Committee has prescribed a form for an application, claim or notice, then the application, claim or notice must be on such form. This Section 3.8 shall apply to applications, claims and appeals filed by any Employee, Retiree, or Beneficiary for Retirement Allowances and Death Benefits. Section 6.2 of this Plan shall apply to any applications and appeals for Disability Retirement Allowances.

**(a) Applications and Claims.** The Personnel Department shall furnish notice of the disposition of an application or other claim within 90 days after the application or claim is presented in writing. If the application or claim is denied, the reasons for such denial shall be communicated to the claimant.

**(b) Appeals.** Any Employee, Member, former Employee, Retiree or Beneficiary, who has been denied a benefit, shall be entitled, on written request to the Pension Committee, to appeal the denial of an application or claim. The individual's appeal must be filed in writing no later than sixty (60) days after the individual receives notice of the disposition of his claim or application under Section 3.8(a) and the individual's appeal must be accompanied by a written statement of the claimant's position. A claimant may also request to appear before the Pension Committee to present his position. The Pension Committee shall schedule a full and fair hearing of the issue. The Pension Committee's decision shall be made within sixty (60) days after the hearing.

No legal action related to the Retirement System to recover benefits or with respect to any other matter related to the Retirement System may be commenced before the claimant has timely exhausted the claim and appeal procedures described above. In no event may any such action be brought more than three (3) years after the claim was first incurred, after the occurrence of the event on which the claim is based, or the first day on which the claimant had notice of the circumstances giving rise to the claim, whichever is earlier.

**3.9 Board of Trustees.** The Board of Trustees of the Retirement System shall have the authority and powers granted trustees under Louisiana law to the extent that such powers and authority are not inconsistent with the terms of this Retirement System.

## **ARTICLE IV MEMBERSHIP**

**4.1 Membership Mandatory.** Any person who is or becomes an Employee of the Board shall be a Member of the Retirement System as a condition of his employment, except as provided in Section 7.10.

**4.2 Termination of Membership.** Membership in the Retirement System shall cease when an Employee is separated from service of the Board or enters the DROP program in accordance with Section 7.4, except:

**(a)** If a terminated Member leaves his Accumulated Contributions on deposit with the Retirement System and becomes an Inactive Member as provided for in Section 6.5, or



(b) If an Employee leaves the service of the Board because he joins the uniformed services, provided that such Employee returns to service with the Board within the time set forth in Section 5.3(b).

## **ARTICLE V CREDITED SERVICE**

**5.1 General.** A Member of the Retirement System shall be entitled to receive a Retirement Allowance based on the total of the following types of service. For Retirement Allowance purposes, all Credited Service shall be combined and rounded to the nearest full day.

**5.2 Amount of Credited Service.** Credited Service is granted for all service an Employee of the Board renders and on account of which all contributions have been made as required under these Rules and Regulations, subject to the following restrictions:

(a) **Leave Without Pay.** Service credit shall not be granted for any time a Member is on a leave without pay unless it is to perform service in the uniformed services, as described in Section 5.2(b), or unless it is compensable under the workers compensation laws. In either case, the Member shall be allowed Credited Service only for the time during which he contributed the amount he would have paid as an active Employee. Except as required by applicable federal laws concerning employees returning from service in the uniformed services, no Credited Service will be granted for any pay period if the Member's contribution is not made by the time such contributions would have been paid if the Member were actively at work.

(b) **Service in the Uniformed Services.** An Employee who was granted a leave of absence in order to join the armed forces of the United States, shall be given Credited Service for the full time he was on such leave of absence, provided that he returns to the service of the Board within five (5) years (unless a different time period would apply under the federal laws governing veteran's reemployment rights), and provided such Employee returns to the service of the Board within the applicable periods of time as specified in the following subparagraphs (1) through (4) of Section 5.2(b) after a separation from the military service (unless federal law provides for a shorter or longer time period):

(1) If the individual was in the uniformed services less than 31 days, he must report to the Board:

(i) not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the

completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the individual from the place of that service to the individual's residence; or

(ii) as soon as possible after the expiration of the eight-hour period referred to in Subsection 5.2(b)(1)(i) above, if reporting within the period referred to in such subsection is impossible or unreasonable through no fault of the individual.

(2) In the case of an individual who is absent from the Board for a period of any length for the purpose of an examination to determine the person's fitness to perform service in the uniformed services, by reporting in the manner and time referred to Section 5.2(b)(1) above.

(3) In the case of an individual whose period of service in the uniformed services was for more than 30 days but less than 181 days, by submitting an application for reemployment with the Board not later than 14 days after the completion of the period of service or if submitting such application within such period is impossible or unreasonable through no fault of the individual, the next first full calendar day when submission of such application becomes possible.

(4) In the case of an individual whose period of service in the uniformed services was for more than 180 days, by submitting an application for reemployment with the Board not later than 90 days after completion of the period of service.

**(c) Contribution for Credited Service.** A Member in order to obtain Credited Service under this Section 5.2 shall be required to contribute four percent (4%) of his Earnable Compensation while on leave of absence while serving in the Armed Forces of the United States and for the period of time for which the Member will receive credit under Section 5.2. Earnable Compensation, for this purpose, being the "Earnable Compensation" as defined under these Rules and Regulations which the Member was receiving prior to commencing the leave of absence in order to join the Armed Forces of the United States. The Member shall not be required to pay any interest on the Member contribution made pursuant to this Section 5.2(c).

**(d) Time in which to make Contributions.** The Member who is required to make a contribution pursuant to Section 5.2(c) of these Rules and Regulations in order to obtain Credited Service shall make those contributions within the time period starting with the date of re-employment and continuing for up to three (3) times the length of the Employee's immediate past period of uniformed service in the Armed Forces of the United States, with the repayment period not to exceed five (5) years. If the contribution is not made within the applicable time period no Credited Service shall be given under this Section 5.2.

(e) If the Member has met all the terms and conditions of Section 5.2 of these Rules and Regulations, the Member's service while in the Armed Forces of the United States shall for all purposes be considered as continuous and uninterrupted Credited Service with the Employer.

**5.3 Unused Sick Leave.** A Member shall receive credit in the Retirement System for the number of days of unused sick leave on the Member's record at his date of Retirement or prior separation from employment, subject to the following conditions:

(a) **Amount.** Credit is granted on a proportional basis of one (1) year of Credited Service for each two hundred fifty (250) days of unused sick leave. Such credit is used in computing the Member's Retirement Allowance, and can be used to satisfy eligibility requirements for Retirement benefits (except for the requirements to become Vested).

(b) **Transfer to Retirement System.** At the time Credited Service is granted (and as a condition for the grant) in the Retirement System for such unused sick leave, the Member shall transfer from his accumulated sick leave the cash equivalent (as determined by the Pension Committee) of the accumulated days credited in the Retirement System.

(c) **Requirement to Utilize Unused Sick Leave.** In applying for a Retirement Allowance under Section 6.1(a)(5), a Member shall be required to use all of his unused sick leave towards meeting the eligibility requirements of the Credited Service component of Section 6.1(a)(5).

**5.4 Unused Annual Leave.** A Member shall receive credit in the Retirement System for the number of days of unused annual leave on the Member's record at his date of Retirement or prior separation from employment, subject to a maximum of one hundred eleven (111) days of unused leave and provided the Member is Vested prior to purchase, and subject to the following conditions:

(a) **Amount.** Credit is granted on a basis of one (1) year of Credited Service for each two hundred fifty (250) days of unused annual leave. Such credit is used in computing the Member's Retirement Allowance, and can be used to satisfy eligibility requirements for Retirement benefits (except for the requirements to become Vested).

(b) **Transfer to Retirement System.** At the time Credited Service is granted (and as a condition for the grant) in the Retirement System for such unused annual leave, the Member shall transfer from his accumulated annual leave the cash equivalent (as determined by the Pension Committee) of the accumulated days credited in the Retirement System.

**5.5 Military Service.** A Member who has not yet Retired from the Board (and who has not yet elected to participate in the DROP program) may purchase one or more additional days of Credited Service in the Retirement System (up to and not to exceed four (4) years total) for each day of Active Duty Military Service, subject to all of the following conditions:

**(a) Honorable Discharge Required.** The Member must have been honorably discharged from the Armed Services of the United States of America.

**(b) Proof of Military Service.** The Member must have furnished proof satisfactory to the Pension Committee of his or her Active Duty Military Service, including the dates of that Active Duty Military Service.

**(c) Ten Years of Service Required.** Before purchasing the additional days of Credited Service under this Section 5.5, the Member must have accumulated at least ten (10) years of Credited Service in the Retirement System (not including service credited under this Section but including any Credited Service transferred from the City of New Orleans or other State systems as permitted under these Rules and Regulations).

**(d) Member Contributions.** For each day of Credited Service purchased, the Member must pay into the Retirement System, in a lump sum at any time before Retirement, an amount equal to the sum of: (i) four percent (4%) of the Member's daily base pay (defined below) that was in effect at the time the Member first became employed by the Board, plus (ii) interest on the amount computed under item (i) above at seven percent (7%) compounded annually from the date of the Member's entrance into the Retirement System until the date of the Member's purchase of Credited Service for his or her Active Duty Military Service. For purposes of this Section 5.5(d), if the Member was paid on an hourly basis, "daily base pay" means the Member's average base hourly rate (excluding overtime pay, on-call pay, and stand-by pay) in effect on the applicable date times 7 or 8, as applicable; if the Member was paid on a salaried basis, "daily base pay" means the Member's annualized base pay (excluding overtime, on-call pay, and stand-by pay) in effect on the applicable date divided by 365.

**(e) Coordination with Other Systems.** No day of Active Duty Military Service may serve as the basis for purchasing additional days of Credited Service as provided in this Section if that day of Active Duty Military Service was previously used to purchase additional credited service under any other federal, state or other governmental retirement system and if the Member's credited service under that other governmental retirement system has been or can be transferred to the Retirement System.

**(f) No Double Credit.** No day of Active Duty Military Service may serve as the basis for purchasing additional days of Credited Service as provided

in this Section if the Member has received Credited Service for that day of Active Duty Military Service under Section 5.2(b).

**(g) Compliance with Federal Law.** Effective as of December 12, 1994, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u).

**5.6 Transfers Between Systems.** Pursuant to La. R.S. 11:141-43, to the extent it does not conflict with La. R.S. 11:3822 (the "Transfer Statutes"), transfer of credits and funds between the Retirement System and any other retirement system for which transfers are authorized under the Transfer Statutes shall be allowed under the rules in the Transfer Statutes, with any interest computed at 7%. In addition, transfers between the Retirement System and the retirement system of the City of New Orleans (the "City System") shall be governed by the following rules to the extent they are consistent with the Transfer Statutes:

**(a) Applicability and Eligibility.** Any employee, in either system, not yet retired, who is transferring from employment covered by one system to employment covered by the other system, may transfer his service credits and be given credit in the system to which he transfers for all his creditable service in the previous system, provided he meets the eligibility requirements specified in the Transfer Statutes and provided all of the reserves necessary to fund his prior service credit and membership credit plus all allowable interest on these reserves are transferred from the system to which he is being transferred.

**(b) Amount of Funds Transferred.** The amount to be transferred shall be calculated as of the date of credit transfer based on the GASB #5 value of accumulated benefits with seven percent (7%) annual interest, five percent (5%) annual salary scale, and the remaining actuarial assumptions in use by the sending system for determining GASB #5 liability at the time of transfer. Such amount shall not include a reserve for future cost-of-living benefits. The salary history and benefit structure of the employee under the sending system will be used in this calculation.

**(c) Repayment of Withdrawals.** Where a Member withdrew his contributions from either system and wishes to receive credit for all past service in either system, he can repay all contributions withdrawn plus allowable interest thereon to the system from which he transferred, after which such past service credits can be transferred, to his current service in accordance with the rules of the system from which he withdrew; after which such service credit and funds can be transferred in accordance with the provisions of Subsections 5.6(a) and (b) above.

**(d) Unpaid Employee Contributions.** No membership service credits, that is, service as an employee rendered after the date of the establishment of the system from which the employee is transferring, shall be

allowed for those periods in which there were no employee contributions, unless the transferring employee pays for such uncontributed periods those funds which would have been the contributions for said periods plus all allowable interest thereon, after which such service credit and funds can be transferred in accordance with the provisions of Subsection 5.6(a) and (b) above.

**(e) Effective Date; Amendments.** The reciprocity with the Retirement System of the City of New Orleans and this Retirement System (the "Agreement") shall be effective as of October 17, 1988. This Agreement can be modified or amended only with consent of the Pension Committee and the Pension Board of the City together with ratification by the City Council (for the City) and the Board. Any modification or amendment of the Agreement shall not affect in any way the rights of any employee who has previously effected a transfer under this Agreement or who has initiated an application for transfer under the provisions of the Agreement.

**(f) Termination of Reciprocity.** If the Board of the Employees' Retirement System of the City of New Orleans (the "City Board") or the Pension Committee of the Employee's Retirement System of the Sewerage and Water Board (the "Pension Committee") seeks to terminate the Agreement, the party seeking termination shall follow the following provisions:

**(1)** If the City Board wishes to terminate the Agreement, it shall:

**(i)** Provide the Pension Committee thirty (30) days written notice before it meets to consider such action;

**(ii)** After proper notice has been given, the City Board shall meet to discuss and vote on resolution to terminate;

**(iii)** If said vote is affirmative, the City Board shall provide the Pension Committee a written notice of not less than thirty (30) days, that it intends to seek approval from the City Council to terminate the agreement; and

**(iv)** If the City Council grants the City Board the authority to terminate the Agreement, said termination shall not become effective until after the City Board provides the Pension Committee with a ninety (90) day written notice of termination.

**(2)** If the Pension Committee wishes to terminate the Agreement, it shall:

**(i)** Provide the City Board thirty (30) days written notice before it meets to consider such action.

(ii) After proper notice has been given, the Pension Committee shall meet to discuss and vote on resolution to terminate;

(iii) If said vote is affirmative, the Pension Committee shall provide the City Board a written notice of not less than thirty (30) days, that it intends to seek approval from the Sewerage and Water Board of New Orleans to terminate the agreement; and

(iv) If the Board of Trustees grants the Pension Committee the authority to terminate the Agreement, said termination shall not become effective until after the Pension Committee provides the City Board with a ninety (90) day written notice of termination.

(3) Termination shall not affect in any way the rights of any employee who has previously effected a transfer under the Agreement or who has initiated an application for transfer under or pursuant to the Agreement. Transfers of credits and funds between the Retirement System and the City System shall not be permitted unless a reciprocity agreement is in effect.

(4) The Board of Trustees may establish such rules and regulations for the transfer of creditable service and contributions to or from another public retirement system in Louisiana other than the City System. Such rules and regulations shall be consistent with funding the Retirement System on a sound actuarial basis.

(5) No portion of any transfers to this Retirement System pursuant to this Section 5.6 shall be considered an Annual Addition to the account of any Member as that term is defined in Section 6.10(c)(1).

**5.7 Repayment After Reemployment.** If a former Member who elected to be paid his Accumulated Contributions becomes reemployed by the Board and remains employed by the Board for at least eighteen (18) months thereafter, he may repay in a single lump sum to the Retirement System the amount he had previously received as a refund together with interest:

(a) at a rate of four percent (4%) with respect to the portion of his repayment attributable to his years of Creditable Service before 1970, and

(b) at a rate of seven percent (7%) with respect to the portion of his repayment attributable to his years of Creditable Service on or after January 1, 1970.

In all cases, interest is compounded annually to the date of repayment. Repayment may only be made by the Employee while he is an active Member. On such repayment, the Member will be restored the entire period of Creditable Service covered by the repayment.

**5.8 Purchase of Credited Service through a direct transfer from Section 4.03(b) annuity and Section 457 Plan.** Any Member who may purchase Credited Service under the provisions of this Retirement System, including, but not limited to, Sections 5.5, 5.6(c) and 5.7 may purchase such Credited Service in the Retirement System through a direct transfer from a Member's account balance in an Internal Revenue Code Section 403(b) annuity or Internal Revenue Code Section 457 Plan. The Retirement System will accept such direct transfers as payment for Credited Service purchased under the Retirement System.

**5.9 Purchase of Credited Service for Hurricane Katrina Affected Members.** Any member who was placed on "disaster leave" by the employer starting October 1, 2005 because of hurricane Katrina and who returned to work for the employer, prior to April 1, 2006, may purchase days of credited service in the Retirement System for the period October 1, 2005 through the date that the member returned to full time employment with the Sewerage & Water Board, but for a period no greater than October 1, 2005 through March 31, 2006. For each day of credited service purchased, the member must pay into the Retirement System, in a lump sum at any time before retirement, an amount equal to the sum of: (i) four percent (4%) of the member's daily base pay, as defined in Section 5.5(d) of this document that was in effect on October 1, 2005; plus, (ii) interest on the amount compounded under item (i) above at seven percent (7%) compounded annually from October 4, 2005 until the date of the member's purchase of credited service under this section.

## **ARTICLE VI BENEFITS**

### **6.1 Retirement Allowance.**

**(a) Eligibility.** Any Active Member who:

**(1)** has thirty (30) or more years of Credited Service, regardless of the Member's age, or

**(2)** is Vested and has reached age sixty (60), or

**(3)** effective January 1, 1996, has reached age sixty-five (65), and has five (5) or more years of Credited Service, or

**(4)** reached age seventy (70), regardless of the number of years of Credited Service, or



(5) whose age and years of Credited Service equals or exceeds eighty (80),

may Retire after submitting his written application to the Personnel Department, setting forth the day (not less than ninety (90) days nor more than one hundred twenty (120) days subsequent to the execution and filing thereof; however, this requirement may be waived by the Personnel Department) he desires to Retire, provided that, at the time so specified for his Retirement, he has or will have attained the applicable minimum age and/or service requirement provided above, or in accordance with other applicable terms and conditions set forth in this Article VI.

**(b) Retirement Allowance at age sixty-two (62), thirty (30) years of Credited Service, or when age and Credited Service equal eighty (80).** Any Active Member who at his retirement has (1) reached age sixty-two (62), (2) has thirty years of Credited Service or (3) whose age and Years of Credited Service equal eighty (80), shall receive a Retirement Allowance payable in the form of an annuity for the Member's life (i.e., a straight life annuity, which is the normal form of benefit). If an Optional Allowance is selected, pursuant to Section 6.1(e), the amount of any Optional Allowance will be the Actuarial Equivalent of the Member's straight life annuity. The Retirement Allowance shall be equal to the sum of:

(1) Two and one-half percent (2.5%) of the Member's Average Compensation multiplied by the number of years of Credited Service, not to exceed twenty-five (25) years; and

(2) Four percent (4%) of his Average Compensation multiplied by the number of years of Credited Service in excess of twenty-five (25) years.

(3) But, in no event shall the total Retirement Allowance of a Member, including the supplemental Retirement Allowance earned on rehiring, exceed one hundred percent (100%) of a Member's Average Compensation.

**(c) Reduction for Early Retirement.** Notwithstanding the above, any Active Member who at his Retirement is under age sixty-two (62) and (1) has less than thirty (30) years of Credited Service or (2) whose age and Years of Credited Service do not equal or exceed eighty (80), shall have his Retirement Allowance reduced by three percent (3%) for each year that his age at his Retirement (rounded to the nearest day) is below age sixty-two (62).

**(d) Cost of Living Adjustment.**

**(1) Over Age Sixty-Five (65) Retirees.** The Retirement Allowance for Members over age sixty-five (65) shall be subject to a cost-of-living adjustment each January 1. The adjustment each year shall not be compounded, but shall be computed only on the Member's original Retirement Allowance. It shall be based on the increase in the consumer price index (CPI) for all urban wage earners as published by the U.S. Department of Labor. The yearly increase shall be at least equal to the twelve (12) month change in the CPI, utilizing the prior August index as published in "Economic Indicators". If the change in the CPI is negative, or zero, then no cost-of-living increase shall be given. If the CPI increase is in excess of 2%, then the cost-of-living increase shall be limited to 2%. The yearly cost-of-living increase can be any percentage amount between the CPI increase and 2%. The CPI increase shall only be applied to the first \$10,000 of a Member's annual Retirement Allowance, in order to calculate the annual cost-of-living increase. A Member's annual Retirement Allowance in excess of \$10,000 shall not be considered in computing the annual cost-of-living increase. Adjustments for partial years of retirement after age sixty-five (65) shall be prorated, based on the actual number of days retired and over age sixty-five (65) during the twelve(12) month period ending December 31.

**(2) Dependent Benefits.** Optional dependent benefits shall be subject to the same cost of living adjustments as described above, beginning the first day of the year after the dependent reaches age sixty-five (65).

**(e) Optional Allowance.** On application for a Retirement Allowance, any Member may elect to receive an Optional Allowance. An "Optional Allowance" means a joint and survivor annuity that is the Actuarial Equivalent of the Member's Retirement Allowance and that pays a reduced monthly benefit to the Member for his or her life and then, after the Member's death, pays a percentage of that Member's Retirement Allowance to the Member's surviving spouse for the spouse's life. A Member may elect the Optional Allowance subject to the following conditions:

**(1) Deadline and Election.** The Member must elect the Optional Allowance before the first payment of the Member's Retirement Allowance becomes payable. The Member's election must be in a written application, duly acknowledged and filed with the Personnel Department before the Member Retires. The written election must specify the percentage of the Member's reduced monthly benefit that will be payable to the Member's surviving spouse, which percentage must be a multiple of five percent (5%), subject to a maximum of one hundred percent (100%).

**(2) Benefit to Surviving Spouse.** After the death of a Member who elected an Optional Allowance, if the spouse survives the Member, the spouse shall be entitled to receive for the spouse's life the chosen percentage of the Member's reduced Retirement Allowance after adjustment for post-retirement cost-of-living benefit increases, if any.

**(3) Prior Plan Rules.** If a Member Retired under the rules and regulations in effect before the adoption of the 1995 amendment and restatement of the Rules and Regulations and elected:

**(i) Percentage Election.** A specific percentage (e.g., seventy-five percent (75%)) to be payable to his surviving spouse, such percentage shall be applicable to the Member's Retirement Allowance after adjustment for post-retirement cost-of-living benefit increases, if any, when determining the initial benefit due the spouse at the Member's death.

**(ii) Dollar Amount Elected.** A specific dollar amount (e.g., one hundred dollars (\$100)) to be payable to the surviving spouse, such amount shall be converted to a percent of the Member's Retirement Allowance and such percentage shall be applicable to Member's Retirement Allowance after adjustment for post-retirement cost-of-living benefit increases, if any, when determining the initial benefit due the spouse at the Member's death.

**(4) "Pop-Up" Elections if Spouse Predeceases Retiree.** Once payments have begun, the Optional Allowance election may not be revoked for any reason, including, but not limited to the Member's subsequent divorce from the Member's Spouse. However, if a Retiree has elected an Optional Allowance with a "pop-up" feature and the Retiree's spouse dies before the Retiree, the monthly benefit payable to the Retiree shall increase (or "pop-up") to the monthly payment that would have been paid to the Retiree if the Retiree had not elected the Optional Allowance (taking into account cost of living adjustments and other adjustments that would have been made to the Retiree's monthly benefit since payment commenced to the Retiree). The increase shall be effective as of the first of the month after the month in which the Personnel Department receives written notice and proof of the spouse's death. If the Member elects this "pop-up" feature to the Optional Allowance, the actuarial reduction to the Member's benefit will be greater than if the "pop-up" feature had not been elected.

## **6.2 Disability Retirement Allowances.**

**(a) Eligibility and Application.** On written application, a Member that has attained 10 years of Credited Service or more may retire on a Disability Retirement Allowance, provided that the Pension Committee approves the application. The Member must submit a written application to the Personnel Department, which written application must be supported by written detailed medical information provided by a Louisiana licensed physician. The Personnel Department shall investigate and verify all medical information submitted along with any written application submitted by a Member. The Personnel Department shall submit any verified written application together with supporting medical information to the Pension Committee for consideration. Any written application for a Disability Retirement Allowance shall be considered and acted on by the Pension Committee within ninety (90) days from receipt thereof. The Pension Committee may require that the Member be examined by a licensed physician selected by the Pension Committee for the purpose of determining whether the Member is Disabled. The decision of the Pension Committee as to eligibility for Disability Retirement Allowance shall be final and conclusive.

**(b) Amount.** On Retirement for Disability a Member shall receive a Disability Retirement Allowance equal to the greater of:

**(1)** A monthly annuity that is the Actuarial Equivalent of the Member's Accumulated Contributions (with interest) at the time of Retirement, or

**(2)** A monthly annuity based on seventy-five (75%) of the Disabled Member's Accrued Benefit determined by crediting the Disabled Member with years and days of Credited Service that would have been credited to the Member had he worked until age sixty-two (62).

**(c) Workers Compensation Offset.** The benefits provided in Section 6.2(b) above shall be offset by any worker's compensation benefits which the Member may be receiving in accordance with the provisions of Section 6.7.

**(d) Annual Submission of Medical Information.** Any Retiree receiving a Disability Retirement Allowance must annually submit to the Personnel Department written detailed medical information provided by a Louisiana licensed physician supporting that the Retiree is still Disabled. Should any Disabled Retiree fail or refuse to submit such medical information, the Disability Retirement Allowance may be suspended, and at the expiration of six (6) months, all his rights in and to a Disability Retirement Allowance, including that portion previously suspended, shall be revoked by the Pension Committee.

**(e) Cost of Living Adjustment.** For any Member who becomes Disabled on or after January 1, 1984, the Disability Retirement Allowance shall be subject to the same cost of living adjustment after age sixty-five (65) described in Section 6.1(d).

**(f) Medical Re-examination.** Re-examination of Employees Retired on Account of Disability:

**(1) Frequency.** Once each year, the Pension Committee may require any Disabled Employee who has not attained age sixty (60) to undergo a medical examination by a physician selected by the Pension Committee.

**(2) Failure or Refusal.** Should any Disabled Employee fail or refuse to submit to such medical examination, the Disability Retirement Allowance may be suspended, and at the expiration of six (6) months, all his rights in and to a Disability Retirement Allowance, including that portion previously suspended, shall be revoked by the Pension Committee.

**(3) Not Disabled.** Should it appear from a medical examination that a Disabled Employee is able to return to the position from which he was pensioned, then his Disability Retirement Allowance shall be discontinued, and he shall be returned to his former position, but the Disability Retirement Allowance shall continue until said Employee is restored to his former position or to one for which he is reasonably suited and/or trained to perform.

### **6.3 Death Benefits.**

**(a) Death of a Regular Retiree.** Should a Retiree who is receiving a Retirement Allowance (not Disabled) die, his spouse shall be entitled to receive the Optional Allowance, if any, chosen at Retirement. Such amount shall be subject to cost of living adjustments as set forth in Section 6.1(f).

**(1) Failure to Elect Option Allowance.** If the Retiree has not elected an Optional Allowance, then the Retiree's Beneficiary, shall only be entitled to receive the value of the Retiree's Accumulated Contributions at the time of his Retirement less the Retirement Allowance payments the Retiree received before his death, if any.

**(2) Death Within 30 Days.** If a Retiree does not elect the Optional Allowance and dies within thirty (30) days after Retirement, his spouse at the time of death shall be entitled to the death benefit or refund of contributions as provided in Section 6.3(c).

**(b) Death of Disabled Retiree.** Should a person who is receiving a Disability Retirement Allowance die, his spouse and/or Eligible Dependents (if any) shall be entitled to receive the following benefits:

**(1) Regular Spousal Benefit.** The spouse is entitled to receive eighty percent (80%) of the former Member's Disability Retirement Allowance. Such benefit shall commence at the later of:

- (i)** The former Member's death, or
- (ii)** The spouse's attainment of age sixty-two (62).

The spouse's benefit shall be subject to the cost of living adjustment after attaining age sixty-two (62) as set forth in Section 6.1(d).

**(2) Reduced Early Spousal Benefit.** If a Disabled former Member dies before his spouse reaches age sixty-two (62), the spouse may elect to receive, in lieu of the benefit in Section 6.3(b)(1), the Actuarial Equivalent of the Member's Accrued Benefit at Disability commencing at any time after the former Member's death.

**(3) Spouse with Eligible Dependents.** If a Disabled former Member dies before his spouse reaches age sixty-two (62) and there are Eligible Dependents, then if the Member's spouse does not elect to receive the benefit under Section 6.3(b)(2) above, sixty-five percent (65%) of the Disability Retirement Allowance will continue to the spouse until the last child ceases to be an Eligible Dependent, until the spouse attains age sixty-two (62), or until the spouse commences receiving or applies for benefits under Section 6.3(b)(2) above, whichever occurs first.

**(4) Eligible Dependents, No Spouse.** If there is no spouse, the surviving Eligible Dependents (or their legal representatives) shall have the option of selecting:

- (i)** The benefit in Section 6.3(b)(3), or
- (ii)** Twenty-five percent (25%) of the Member's Earnable Compensation for the last full calendar year before his Retirement (both of which are payable from the Fund) plus the Member's Accumulated Contributions (with interest).

To effect this option, there must be a notarized unanimous agreement signed by each of the surviving Eligible Dependents (or their legal representatives), and it must be filed with the Personnel Department before the commencement of the benefit.

**(5) Disabled Spouse with No Eligible Dependents.** If a Disabled former Member dies before his spouse reaches age sixty-two (62), if the spouse is Disabled, and if there are no Eligible Dependents, then if the spouse does not elect to receive the benefit under Section 6.3(b)(2) above, sixty-five percent (65%) of the Disability Retirement Allowance will continue to the spouse until the spouse reaches age sixty-two (62) or until the spouse commences receiving or applies for benefits under Section 6.3(b)(2), whichever occurs first. If the spouse is able to return to gainful employment, the benefit being paid to such spouse due to Disability shall be discontinued.

**(6) Non-Disabled Spouse with No Eligible Dependents.** If there are no Eligible Dependents, the spouse may elect to receive in lieu of the benefits above, the Member's Accumulated Contributions (with interest) plus twenty-five percent (25%) of the Member's Earnable Compensation for the last full calendar year before his Retirement (both of which are payable from the Fund).

**(7) No Spouse, No Eligible Dependents.** If there is no spouse or Eligible Dependents, the Member's Beneficiary shall be entitled to receive the Member's Accumulated Contributions (with interest) in excess of Disability Retirement Allowance payments the Member received before his death, if any.

**(8) Pre-1984 Disabilities.** If a Member became Disabled before January 1, 1984 and died, the Member's Beneficiary shall only be entitled to receive the Member's Accumulated Contributions (with interest) in excess of Disability Retirement Allowance payments the Member received before his death, if any.

**(c) Death While Eligible for Retirement.** If a Member dies while the Member is eligible to begin receiving a Retirement Allowance but before he commences receiving such benefit (whether or not the Member is actively at work at his death) and if the Member leaves a spouse, the spouse shall be entitled to elect to receive Retirement benefits equal to the amount that would have been paid had the Member Retired on the date he or she died and elected an Optional Allowance with one hundred percent (100%) of the reduced Retirement Allowance continued to the spouse (i.e., one hundred percent (100%) Option). If this benefit is elected by the spouse, there shall be no refund of the Member's Accumulated Contributions.

**(1) Eligible Dependents, No Spouse.** If there is no spouse, the surviving Eligible Dependents (or their legal representative) shall have the option of selecting:

- (i) the benefits under Section 6.3(d)(3), or

- (ii) twenty-five percent (25%) of the Member's prior calendar year's Earnable Compensation plus the Member's Accumulated Contributions (with interest) (both of which are payable from the Fund).

To effect this option, there must be a notarized unanimous agreement signed by each of the surviving Eligible Dependents (or their legal representatives), and it must be filed with the Personnel Department before commencement of the benefit.

**(d) Death with Ten Years of Service.** If a Member dies while he is still an Employee of the Board but before he is eligible for a Retirement Allowance and if the Member has at least ten (10) years of Credited Service, his spouse at the time of death and/or Eligible Dependents shall be entitled to receive the following benefits:

**(1) Regular Spousal Benefit.** The spouse is entitled to receive eighty percent (80%) of the Member's Accrued Benefit determined at death. Such benefit shall commence at the later of:

- (i) The Member's death, or
- (ii) Attainment of age sixty-two (62) by the spouse.

**(2) Reduced Early Spousal Benefit.** If the Member dies before his spouse reaches age sixty-two (62), the spouse may elect to receive, in lieu of the benefit in Section 6.3(d)(1), the Actuarial Equivalent of the Member's Accrued Benefit at death commencing at any time after the former Member's death.

**(3) Spouse with Eligible Dependents.** If a Member dies before the spouse reaches age sixty-two (62), if there are Eligible Dependents, and if the spouse does not elect to receive the benefits under 6.3(d)(2) above, then sixty-five percent (65%) of the Disability Retirement Allowance which would have been payable had the Member Retired on Disability before his death shall be paid to the spouse until the last child ceases to be an Eligible Dependent, until the spouse attains age sixty-two (62), or until the spouse commences receiving or applies for benefits under Section 6.3(d)(2) above, whichever comes first.

**(4) Eligible Dependents, No Spouse.** If there is no spouse, the surviving Eligible Dependents (or their legal representatives) shall have the option of selecting:

- (i) the benefit under Section 6.3(d)(3), or



(ii) twenty-five percent (25%) of the Member's prior calendar year's Earnable Compensation plus the Member's Accumulated Contributions (with interest) (both of which are payable from the Fund).

To effect this option, there must be a notarized unanimous agreement signed by each of the surviving Eligible Dependents (or their legal representatives), and it must be filed with the Personnel Department before commencement of the benefit.

**(5) Disabled Spouse with No Eligible Dependents.** If the Member's spouse is Disabled and there are no Eligible Dependents, then if the spouse does not elect to receive the benefit under Section 6.3(d)(2) above, sixty-five percent (65%) of the Disability Retirement Allowance which would have been payable had the Member Retired on Disability before his death, will be payable to the spouse until the spouse attains age sixty-two (62) or the spouse commences receiving or applies for benefits under Section 6.3(d)(2) above, whichever comes first. If the spouse is able to return to gainful employment, the benefit being paid to such spouse due to Disability shall be discontinued.

**(6) No Spouse, No Eligible Dependents.** If there is no spouse or Eligible Dependents, the Member's Beneficiary shall be entitled to receive the Member's Accumulated Contributions (with interest) plus twenty-five percent (25%) of the Member's prior calendar year's Earnable Compensation (both of which are payable from the Fund).

**(e) Death with Between Three and Ten Years of Service.** If a Member dies while he is still an Employee of the Board but before he is eligible for a Retirement Allowance and if the Member has at least three (3) but less than ten (10) years of Credited Service, the Member's Beneficiary shall receive a refund of the Member's Accumulated Contributions (with interest) plus twenty-five percent (25%) of the Member's prior calendar year's Earnable Compensation (both of which are payable from the Fund).

**(f) Death with Less Than Three Years of Service.** If a Member dies while he is still an Employee of the Board but with less than three (3) years of Credited Service, the Member's Beneficiary shall receive a refund of the Member's Accumulated Contributions (with interest).

**6.4 Separation Retirement Allowance.** Any Vested Member who terminated employment with the Board before attaining age sixty (60) and remained an Inactive Member of the Retirement System by permitting his Accumulated Contributions to remain on deposit with the Retirement System shall be entitled to receive a Retirement Allowance beginning when he reaches age sixty (60) (or at any age after sixty (60)

which he may elect), subject to the reductions applicable to Retirement before age sixty-two (62). Any Vested Member who terminated employment with the Board before attaining age sixty (60) and remained an Inactive Member of the Retirement System by permitting his accumulated contributions to remain on deposits with the Retirement System and prior to age sixty (60) meets the Rule of Eighty (80), his age and Years of Credited Service equal, or exceed, eighty (80), shall not be entitled to receive a Retirement Allowance until he attains age sixty (60) (or at any age after sixty (60)) which may be elected), subject to the reductions applicable to Retirement before age sixty-two (62). The amount of this Retirement Allowance shall be based on the Member's Accrued Benefit on the date he terminated employment with the Board.

**6.5 Refund of Contributions.** A Member who terminates employment with the Board may elect to be paid the amount of his Accumulated Contributions (with interest). If a terminating Member makes this election, he shall not be entitled to receive a Retirement Allowance unless he repays his Accumulated Contributions as provided in Section 5.7, subject to the terms of that Section.

**(a) Not Vested.** On termination of his employment with the Board, a Member who is not Vested may remain an Inactive Member of the Retirement System by permitting his Accumulated Contributions to remain on deposit with the Retirement System for a period of up to five (5) years after the Member's termination. If the Inactive Participant does not become reemployed by the Board before the end of this five year period, the Retirement System will pay him his Accumulated Contributions, with interest.

**(b) Vested.** Any Vested Member who terminates employment with the Board may remain an Inactive Member of the Retirement System by permitting his Accumulated Contributions to remain on deposit with the Retirement System.

**(c) At Death.** If an Inactive Member dies before he is eligible to receive a Retirement Allowance (whether or not he is Vested) or if a Member was not an Employee of the Board at his death, his Accumulated Contributions (with interest) shall be paid to his Beneficiary, and no other benefits described in Section 6.3 shall be payable.

## **6.6 Re-Employment Provisions.**

**(a) Retirees.** Any Retiree receiving a Retirement Allowance shall again become a Member of the Retirement System on re-employment by the Board.

**(1) Retirement Allowance Suspended.** During re-employment, the Member shall receive no Retirement Allowance payments, but shall be one hundred percent (100%) vested in the amount and form of his prior Retirement Allowance and may return to a Retired

status by a reapplication for Retirement, with the amount and form of his prior Retirement Allowance frozen at the original calculation.

**(2) Additional Benefit.** On reapplication for a Retirement Allowance, the Member shall be entitled to an additional separate Retirement Allowance based on the additional years of Credited Service during re-employment and his Average Compensation during his re-employment. In applying the percentage factors in Section 6.1(b) to the Member's additional Credited Service after his reemployment, the additional Credited Service shall be multiplied by the percentage factors in Section 6.1(b) at the levels that apply after the Retiree's prior Credit Service had been applied.

**(3) Death While Re-Employed.** If a Member dies while re-employed, the spouse shall be entitled to the Optional Allowance, if any, previously selected by the Member at his original Retirement plus any additional benefits as specified in Section 6.3 and Section 6.1(g) based on the Member's Accumulated Contributions (with interest) since re-employment and the additional Retirement Allowance as specified above.

**(b) Other Reemployments.** Any Member who terminates employment with the Board without Retiring shall become a Member on his re-employment with the Board. If the period of non-employment is at least two (2) years (five (5) years if such employment was involuntarily terminated due to a Civil Service mandated layoff) and the Member is rehired after attaining age fifty (50), then his Retirement Allowance at Retirement shall not exceed the sum of:

**(1)** the benefit based on the Credited Service and his Average Compensation before re-employment (provided he repays any Accumulated Contribution he previously received as provided in Section 5.7), plus

**(2)** the benefit based on the Credited Service and the Average Compensation since re-employment.

In applying the percentage factors in Section 6.1(b) to the Member's additional Credited Service after his re-employment, the additional Credited Service shall be multiplied by the percentage factors in Section 6.1(b) at the levels that apply after the Member's prior Credited Service had been applied. Nothing in this Section shall abrogate the requirement that the Member must remain in service for at least eighteen (18) months before he can buy back Credited Service by repaying any Accumulated Contributions he previously received as provided in Section 5.7.

**(c) Pension Supplement.** Any additions to the percentage factors accrued during the period of re-employment, as described in Section 6.6(b), shall

also be applied to the supplemental benefit provided in Section 6.1(d) when the provisions thereof are applicable.

#### **6.7 Worker's Compensation Offset.**

**(a) Applicability.** Any amounts which may be paid or payable under the provisions of any worker's compensation statute or similar law to a Member or to the dependents of a Member on account of any accidental disability or accidental death shall be offset on a dollar by dollar basis against and payable in lieu of any benefits payable out of funds provided by the Retirement System on account of any accidental disability or on account of death, expressly including any benefit paid under the provisions of Section 6.1(b). This Subsection shall not deprive the Member or his Beneficiary of the right to a refund of Accumulated Contributions made by the Member.

**(b) Administrative Discretion.** The Pension Committee shall have complete discretion and authority to determine the extent and application of this provision and shall have authority to terminate the Retirement Allowance if the Employee fails to furnish full and complete information regarding Worker's Compensation. The decision of the Pension Committee shall be final.

**6.8 Direct Rollovers.** This Section applies to distributions made on or after January 1, 1994. Notwithstanding any provision of these Rules and Regulations to the contrary that would otherwise limit a Distributee's election under this part, a Distributee may elect, at the time and in the manner prescribed by the Pension Committee, to have any portion of an Eligible Rollover Distribution paid directly to an eligible retirement plan specified by the Distributee in a direct rollover.

#### **6.9 Minimum Required Distributions.**

**(a) Required Beginning Date.** The entire interest of a Member must be distributed or begin to be distributed no later than the Member's Required Beginning Date. Notwithstanding the foregoing, Members who attained age 70½ and who have not Retired by the end of the calendar year in which the Member attained age 70½ may choose each year whether (1) to receive a distribution as of April 1 of each calendar year following the calendar year in which the Member reaches age 70½ or (2) to delay commencement of distributions until no later than April 1 following the calendar year in which the Member retires.

**(b) Limits on Distribution Periods.** As the first Distribution Calendar Year, distributions, if not made in a single-sum, may only be made over one the following periods (or a combination thereof):

- (1) The life of the Member,
- (2) The life of the Member and a designated Beneficiary,
- (3) a period certain not extending beyond the life expectancy of the Member, or
- (4) a period certain not extending beyond the joint and last survivor expectancy the Member and a designated Beneficiary.

(c) **Amount.** Determination of amount to be distributed each year.

(1) **Annuity Requirements.** If the Member's interest is to be paid in the form of annuity distributions under the Rules and Regulations, payments under the annuity shall satisfy the following requirements:

(i) the annuity distributions must be paid in periodic payments made at intervals not longer than one (1) year;

(ii) the distribution period must be over a life (or lives) or over a period certain not longer than a life expectancy (or joint life and last survivor expectancy) described in Code Sections 401(a)(9)(A)(ii) or 401(a)(9)(B)(iii), whichever is applicable.

(iii) the Life Expectancy (or joint life and last survivor expectancy) for purposes of determining the period certain shall be determined without recalculation of Life Expectancy;

(iv) once payments have begun over a period certain, the period certain may not be lengthened even if the period certain is shorter than the maximum permitted;

(v) payments must either be increasing or increase only as follows:

(A) with any percentage increase in a specified and generally recognized cost-of living index;

(B) to the extent of the reduction of the amount of the Member's payments to provide for a survivor benefit on death, but only if the Beneficiary whose life was being used to determine the distribution period described in Subsection 6.9(b) above dies and the payments continue otherwise in accordance with that Subsection over the life of the Member;

(C) to provide cash refunds of Employee contributions on the Member's death; or

(D) because of an increase in benefits under the Retirement System.

(vi) If the annuity is a life annuity (or a life annuity with a period certain not exceeding twenty (20) years), the amount which must be distributed on or before the Member's Required Beginning Date (or, in the case of distributions after the death of the Member, the date distributions are required to begin pursuant to Subsection 6.9(d) below) shall be the payment which is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bimonthly, monthly, semi-annually, or annually.

(vii) If the annuity is a period certain annuity without a life contingency (or is a life annuity with a period certain exceeding twenty (20) years), periodic payments for each Distribution Calendar Year shall be combined and treated as an annual amount. The amount which must be distributed by the Member's Required Beginning date (or, in the case of distributions after the death of the Member, the date of distributions are required to begin pursuant to Subsection 6.9(d) below) is the annual amount for the first Distribution Calendar Year. The annual amount for other Distribution Calendar Years, including the annual amount for the calendar year in which the Member's Required Beginning Date (or the date distributions are required to begin pursuant to Subsection 6.9(d) below) must be distributed on or before December 31 of the calendar year for which the distribution is required.

**(2) Post-1995 Additional Conditions.** Annuities commencing after December 31, 1995, are subject to the following additional conditions:

(i) Unless the Member's spouse is the designated Beneficiary, if the Member's interest is being distributed in the form of a period certain annuity without a life contingency, the period certain as of the beginning of the first Distribution Calendar Year may not exceed the applicable period determined using the table set forth in Q&A A-5 of Section 1.401(a)(9)-2 of the Proposed Income Tax Regulations.

(ii) If the Member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Member and a non-spouse Beneficiary, annuity payments to be made on or after the Member's Required Beginning Date to the designated Beneficiary after the Member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Member using the table set forth in Q&A A-6 of Section 1.401(a)(9)-2 of the proposed Income Tax Regulations.

**(3) Transitional Rule.** If payments under an annuity which complies with Section 6.9(c)(2)(i) above begin before January 1, 1989, the minimum distribution requirements in effect as of July 27, 1987, shall apply to distributions from this Retirement System, regardless of whether the annuity form of payment is irrevocable. This transitional rule also applies to deferred annuity contracts distributed to or owned by the Member before January 1, 1989, unless additional contributions are made under the Retirement System by the Board with respect to such annuity.

**(4) Additional Accruals.** If the form of distribution is an annuity made in accordance with this Subsection 6.9(c), any additional benefits accruing to the Member after his or her Required Beginning Date shall be distributed as a separate and identifiable component of the annuity beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

**(5) Individual Account Benefits.** Any part of the Member's interest which is in the form of an individual account shall be distributed in a manner satisfying the requirements of Code Section 401(a)(9), the proposed regulations thereunder.

**(d) Death Distribution Provisions.**

**(1) Distribution Beginning Before Death.** If the Member dies after distribution of his or her interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used before the Member's death.

**(2) Distribution Beginning After Death.** If the Member dies before distribution of his or her interest begins, distribution of the Member's entire interest shall be completed by December 31 of the calendar year containing the fifth (5th) anniversary of the Member's death except to the extent that an election is made to receive distributions in accordance with (i) or (ii) below:

(i) if any portion of the Member's interest is payable to a designated Beneficiary, distributions may be made over the life or over a period certain not greater than the Life Expectancy of the designated Beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the member died;

(ii) if the designated Beneficiary is the Member's surviving spouse, the date distributions are required to be in accordance with (i) above shall not be earlier than the later of (A) December 31 of the calendar year immediately following the calendar year in which the Member died and (B) December 31 of the calendar year in which the Member would have attained age seventy and one-half (70 ½).

The Member's designated Beneficiary must elect the method of distribution no later than the earlier of (I) December 31 of the calendar year in which distributions would be required to begin under this section, or (II) December 31 of the calendar year which contains the fifty (5th) anniversary of the date of death of the Member. If the designated Beneficiary does not elect a method of distribution, distribution of the Member's entire interest must be completed by December 31 of the calendar year containing the fifth (5th) anniversary of the Member's death.

(3) For purposes of Subsection 6.9(d)(2) above, if the surviving spouse dies after the Member, but before payments to such spouse begin, the provisions of Subsection 6.9(d)(2) with the exception of Section 6.9(d)(2)(ii) therein, shall be applied as if the surviving spouse were the Member.

(4) For purposes of this Subsection 6.9(d), any amount paid to a child of the Member will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

(5) For the purpose of this Subsection 6.9(d), distribution of a Member's interest is considered to begin on the Member's Required Beginning Date (or, if Subsection 6.9(d)(3) above is applicable, the date distribution is required to begin to the surviving spouse pursuant to Subsection 6.9(d)(2) above). If distribution in the form of an annuity described in Subsection 6.9(c)(1) above irrevocably commences to the Member before the Required Beginning Date, the date distribution is considered to begin is the date distribution actually commences.

## **6.10 Limitations on Annual Benefits.**



**(a) Effective Date.** The limitations of this article shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein.

**(b) Amount.** The Annual Benefit otherwise payable to a Member under these Rules and Regulations at any time shall not exceed the Maximum Permissible Benefit. If the benefit the Member would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Maximum Permissible Benefit.

**(c) Participation in another Qualified Defined Benefit Plan.** If the Member is, or has ever been, a Member in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Employer or a predecessor employer, the sum of the Member's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit.

**(d) Limitation.** The application of the provisions of this article shall not cause the Maximum Permissible Benefit for any Member to be less than the Member's accrued benefit under all the defined benefit plans of the Employer or a predecessor employer as of the end of the last Limitation Year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to § 415 of the Internal Revenue Code in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in § 1.415(a)-1(g)(4) of the Income Tax Regulations.

**(e) Combined Limit.** For Limitation Year beginning before January 1, 2000, the sum of the Member's Defined Contribution Fraction and Defined Benefit Fraction will not exceed 1.0 in any Limitation Year, and the pension otherwise payable to the Member under this Retirement System will be limited so as not to exceed these limits. The amount of a Member's Accumulated Contributions before January 1, 1994 is treated as an Annual Addition to a qualified defined contribution plan, for purposes of this Section 6.10(e).

**(f) Other Rules.** The limitations of this article shall be determined and applied taking into account the following rules.

**(1) Benefits Under Terminated Plans.** If a defined benefit plan maintained by the Employer has terminated with sufficient assets for the payment of benefit liabilities of all plan Members and a Member in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the Member's benefits under the terminated plan at each possible annuity starting date shall be

taken into account in applying the limitations of this article. If there are not sufficient assets for the payment of all Members' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Member under the terminated plan.

**(2) Benefits Transferred From the Plan.** If a Member's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c), of the Income Tax Regulations, the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a Member's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan that is not maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c), of the Income Tax Regulations, the transferred benefits are treated by the Employer's plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the Employer that terminated immediately prior to the transfer with sufficient assets to pay all Members' benefit liabilities under the plan. If a Member's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c), of the Income Tax Regulations, the amount transferred is treated as a benefit paid from the transferor plan.

**(3) Formerly Affiliated Plans of the Employer.** A formerly affiliated plan of an Employer shall be treated as a plan maintained by the Employer, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay Members' benefit liabilities under the plan and had purchased annuities to provide benefits.

**(4) Plans of a Predecessor Employer.** If the Employer maintains a defined benefit plan that provides benefits accrued by a Member while performing services for a predecessor employer, the Member's benefits under a plan maintained by the predecessor employer shall be treated as provided under a plan maintained by the Employer. However, for this purpose, the plan of the predecessor employer shall be treated as if it had terminated immediately prior to the event giving rise to the predecessor employer relationship with sufficient assets to pay Members' benefit liabilities under the plan, and had purchased annuities to provide benefits; the Employer and the predecessor employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the

transferred benefits shall be excluded in determining the benefits provided under the plan of the predecessor employer.

**(5) Special Rules.** The limitations of this article shall be determined and applied taking into account the rules in § 1.415(f)-1(d), (e) and (h) of the Income Tax Regulations.

**(g) Definitions.**

**(1) Annual Benefit:** A benefit under these Rules and Regulations that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of Section 6.10. For a Member who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of Section 6.10 as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

No actuarial adjustment to the benefit shall be made for (a) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Member's benefit were paid in another form; (b) benefits that are not directly related to retirement benefits (such as a qualified disability benefits and death benefits); or (c) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to § 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of Section 6.10, and the Rules and Regulations provide that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of Section 6.10 applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the Annual Benefit shall take into account social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A- 3(c),

of the Income Tax Regulations, but shall disregard benefits attributable to employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with (a) or (b) below.

**(i) Benefit Forms Not Subject to § 417(e)(3):** The straight life annuity that is actuarially equivalent to the Member's form of benefit shall be determined under this section (a) if the form of the Member's benefit is either (1) a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Member (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (2) an annuity that decreases during the life of the Member merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in § 401(a)(11)).

**(A) Limitation Years beginning before July 1, 2007.** For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Member's form of benefit computed using whichever of the following produces the greater annual amount: (I) the Actuarial Equivalent specified in Article II; and (II) a 5 percent interest rate assumption and the Applicable Mortality Table defined in Article II for that annuity starting date.

**(B) Limitation Years beginning on or after July 1, 2007.** For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of (1) the annual amount of the straight life annuity (if any) payable to the Member under these Rules and Regulations commencing at the same annuity starting date as the Member's form of benefit; and (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed using a 5 percent interest rate assumption and the Applicable Mortality Table defined in Article II for that annuity starting date.

**(ii) Benefit Forms Subject to § 417(e)(3):** The straight life annuity that is actuarially equivalent to the Member's form of benefit shall be determined under this paragraph if the form of the Member's benefit is other than a benefit form described in Section (i) above. In this case, the actuarially equivalent straight life annuity shall be determined as follows:

**(A) Annuity Starting Date in Plan Years Beginning After 2005.** If the annuity starting date of the Member's form of benefit is in a plan year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of (I) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Member's form of computed using the Actuarial Equivalent specified in Article II; (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed using a 5.5 percent interest rate assumption and the Applicable Mortality Table defined in Article II; and (III) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed using the Applicable Interest Rate defined in Article II and the Applicable Mortality Table defined in Article II, divided by 1.05.

**(B) Annuity Starting Date in Plan Years Beginning in 2004 or 2005.** If the annuity starting date of the Member's form of benefit is in a plan year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed using whichever of the following produces the greater annual amount: (I) the Actuarial Equivalent specified in Article II; and (II) a 5.5 percent interest rate assumption and the Applicable Mortality Table defined in Article II.

If the annuity starting date of the Member's benefit is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, the application of this Section (ii)(B) shall not cause the amount payable under the Member's form of benefit to be less than the benefit

calculated under these Rules and Regulations, taking into account the limitations of Section 6.10, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed using whichever of the following produces the greatest annual amount:

(I) the Actuarial Equivalent defined in Article II;

(II) the Applicable Interest Rate defined in Article II and the Applicable Mortality Table defined in Article II; and

(III) the Applicable Interest Rate defined in Article II (as in effect on the last day of the last plan year beginning before January 1, 2004, under provisions of these Rules and Regulations then adopted and in effect) and the Applicable Mortality Table defined in Article II.

**(2) Applicable Interest Rate:** The rate of interest on 30 year Treasury securities (or any subsequent rate used under Section 417(e) of the Internal Revenue Code) as specified by the Internal Revenue Service for the lookback month. The lookback month applicable to the stability period is the second calendar month preceding the first day of the stability period. The stability period is the Plan Year that contains the annuity starting date for the distribution and for which the applicable interest rate remains constant.

**(3) Compensation:** For purposes of this Section 6.10, Compensation is defined as wages, as defined in Code Section 3401(a), and all other payments of compensation to a Member by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Member a written statement under Code Sections 6041(d) and 6051(a)(3). Compensation must be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)). For Limitation Years beginning after December 31, 1997, compensation paid or made available during such Limitation Year shall include amounts that would otherwise be

included in compensation but for an election under § 125(a), §402(e)(3), § 402(h)(1)(B), § 402(k), or § 457(b).

Except as provided herein, for Limitation Years beginning after December 31, 1991, compensation for a Limitation Year is the compensation actually paid or made available during such Limitation Year.

For Limitation Years beginning on or after July 1, 2007, compensation for a Limitation Year shall also include compensation paid by the later of 2 ½ months after an employee's severance from employment with the Employer maintaining these Rules and Regulations or the end of the Limitation Year that includes the date of the employee's severance from employment with the Employer maintaining these Rules and Regulations, if:

(i) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the Employer;

(ii) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; or

(iii) the payment is received by the employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2 ½ months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment. Back pay, within the meaning of § 1.415(c)-2(g)(8), shall be treated as compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

**(4) Defined Benefit Compensation Limitation:** 100 percent of a Participant's High Three-Year Average Compensation, payable in the form of a straight life annuity.

In the case of a Member who is rehired after a severance from employment, the Defined Benefit Compensation Limitation is the greater of 100 percent of the Member's Highest Average Compensation, as determined prior to the severance from employment or 100 percent of the Member's Highest Average Compensation, as determined after the severance from employment.

**(5) Defined Benefit Dollar Limitation:** Effective for Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation is \$160,000, automatically adjusted under § 415(d) of the Internal Revenue Code, effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

**(6) Employer:** For purposes of this section 6.10, Employer shall mean the employer that adopts this plan, and all members of a controlled group of corporations, as defined in § 414(b) of the Internal Revenue Code, as modified by § 415(h)), all commonly controlled trades or businesses (as defined in § 414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by § 415(h)), or affiliated service groups (as defined in § 414(m)) of which the adopting employer is a part, and any other entity required to be aggregated with the employer pursuant to § 414(o) of the Internal Revenue Code.

**(7) Formerly Affiliated Plan of the Employer:** A plan that, immediately prior to the cessation of affiliation, was actually maintained by the Employer and, immediately after the cessation of affiliation, is not actually maintained by the Employer. For this purpose, cessation of affiliation means the event that causes an entity to no longer be considered the employer, such as the sale of a member controlled group of corporations, as defined in § 414(b) of the Internal Revenue Code, as modified by § 415(h), to an unrelated corporation, or that causes a plan to not actually be maintained by the employer, such as transfer of plan sponsorship outside a controlled group.

**(8) High Three-Year Average Compensation:** The average compensation for the three consecutive calendar years of service (or, if the Member has less than three calendar years of service, the Member's longest consecutive period of service, including fractions of years, but not less than one year) with the Employer that produces the highest average. In the case of a Member who is rehired by the Employer after a severance from employment, the Member's highest average compensation shall be



calculated by excluding all years for which the Member performs no services for and receives no compensation from the Employer (the break period) and by treating the calendar years immediately preceding and following the break period as consecutive. A Member's compensation for a calendar year shall not include compensation in excess of the limitation under § 401(a)(17) of the Internal Revenue Code that is in effect for the calendar year in which such year of service begins.

**(9) Limitation Year:** The Limitation Year is a calendar year. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

**(10) Maximum Permissible Amount:** The lesser of the Defined Benefit Dollar Limitation or the Defined Benefit Compensation Limitation (both adjusted where required, as provided below).

**(i) Adjustment for Less Than 10 Years of Participation or Service:** If the Member has less than 10 years of participation, the Defined Benefit Dollar Limitation shall be multiplied by a fraction -- (i) the numerator of which is the number of Years (or part thereof, but not less than one year) of Participation, and (ii) the denominator of which is 10. In the case of a Member who has less than ten Years of Service with the Employer, the Defined Benefit Compensation Limitation shall be multiplied by a fraction -- (i) the numerator of which is the number of Years (or part thereof, but not less than one year) of Service with the Employer, and (ii) the denominator of which is 10.

**(ii) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or after Age 65:** Effective for benefits commencing in Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation shall be adjusted if the annuity starting date of the Member's benefit is before age 62 or after age 65. If the annuity starting date is before age 62, the Defined Benefit Dollar Limitation shall be adjusted under section (ii)(A), as modified by section (ii)(C). If the annuity starting date is after age 65, the Defined Benefit Dollar Limitation shall be adjusted under section (ii)(B), as modified by section (ii)(C).

**(A) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62:**

**(I) Limitation Years Beginning Before July 1, 2007.** If the annuity starting date for the Member's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under (i) above for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the Actuarial Equivalent specified in Article II; or (2) a 5-percent interest rate assumption and the Applicable Mortality Table as defined in Article II.

**After (II) Limitation Years Beginning on or July 1, 2007.**

**(a) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement.** If the annuity starting date for the Member's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted for years of Participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the Applicable Mortality Table for the annuity starting date as defined in Article II (and expressing the Member's age based on completed calendar months as of the annuity starting date).

**(b) Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement.** If the annuity starting date for the Member's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Member's annuity starting date is the lesser of the limitation determined under (ii)(B)(II)(a) below and the Defined Benefit Dollar Limitation (adjusted under (i) above for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the Member's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of this article.

**(B) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65:**

**(I) Limitation Years Beginning Before July 1, 2007.** If the annuity starting date for the Member's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under (A) above for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the Actuarial Equivalent specified in Article II; or (2) a 5-percent interest rate assumption and the Applicable Mortality Table as defined in Article II.

**(II) Limitation Years Beginning Before July 1, 2007.**

**(a) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement.** If the annuity starting date for the Member's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under (l) above for years of participation less than 10, if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the Applicable Mortality Table for that annuity starting date as defined in Article II (and expressing the Member's age based on completed calendar months as of the annuity starting date).

**(b) Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement.** If the annuity starting date for the Member's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Member's annuity starting date is the lesser of the limitation determined under (b)(2)(ii)(A) above and the Defined Benefit Dollar Limitation (adjusted under (i) above for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under these Rules and Regulations at the Member's annuity starting date to the annual amount of

the adjusted immediately commencing straight life annuity under these Rules and Regulations at age 65, both determined without applying the limitations of this article. For this purpose, the adjusted immediately commencing straight life annuity under these Rules and Regulations at the Member's annuity starting date is the annual amount of such annuity payable to the Member, computed disregarding the Member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under these Rules and Regulations at age 65 is the annual amount of such annuity that would be payable under these Rules and Regulations to a hypothetical Member who is age 65 and has the same accrued benefit as the Member.

**(C)** Notwithstanding the other requirements of this Section (ii), no adjustment shall be made to the Defined Benefit Dollar Limitation to reflect the probability of a Member's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the Member prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Member's death if the Rules and Regulations do not charge Members for providing a qualified preretirement survivor annuity, as defined in § 417(c) of the Internal Revenue Code, upon the Member's death.

**(iii) Minimum benefit permitted:** Notwithstanding anything else in this section to the contrary, the benefit otherwise accrued or payable to a Member under these Rules and Regulations shall be deemed not to exceed the Maximum Permissible Benefit if:

**(A)** the retirement benefits payable for a Limitation Year under any form of benefit with respect to such Member under these Rules and Regulations and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Employer do not

exceed \$10,000 multiplied by a fraction – (I) the numerator of which is the Member's number of Years (or part thereof, but not less than one year) of Service (not to exceed 10) with the Employer, and (II) the denominator of which is 10; and

**(B)** the Employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the Member participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under § 401(h), and accounts for postretirement medical benefits established under § 419A(d)(1) are not considered a separate defined contribution plan).

**(11) Predecessor Employer:** If the Employer maintains a plan that provides a benefit which the Member accrued while performing services for a Former Employer, the Former Employer is a Predecessor Employer with respect to the Member. A former entity that antedates the Employer is also a Predecessor Employer with respect to a Member if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

**(12) Severance from Employment:** An employee has a severance from employment when the employee ceases to be an employee of the Employer. An employee does not have a severance from employment if, in connection with a change of employment, the employee's new employer maintains the plan with respect to the employee.

**(13) Year of Participation:** The Member shall be credited with a Year of Participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) the Member is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period, and (2) the Member is included as a Member under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the Member shall equal the amount of benefit accrual service credited to the Member for such accrual computation period. A Member who is permanently and totally disabled within the meaning of § 415(c)(3)(C)(i) of the Internal Revenue Code for an accrual computation period shall receive a Year of Participation with respect to that period. In addition, for a Member to receive a Year of

Participation (or part thereof) for an accrual computation period, the plan must be established no later than the last day of such accrual computation period. In no event shall more than one Year of Participation be credited for any 12-month period.

**(14) Year of Service:** For purposes of Section 6.10, the Member shall be credited with a Year of Service (computed to fractional parts of a year) for each accrual computation period for which the Member is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of these Rules and Regulations in order to accrue a benefit for the accrual computation period, taking into account only service with the Employer or a predecessor employer.

#### **6.11 Limits on Distributions to Top Twenty-Five (25) Employees.**

**(a) Termination Benefit Limit.** If the Retirement System terminates, the benefit of any highly compensated active or former employee (as defined in Code Section 414(q)) is limited to a benefit that is nondiscriminatory under Code Section 401(a)(4).

**(b) Distribution Limit.** For Plan Years beginning on or after January 1, 1994, benefits distributed to any of the twenty-five (25) most highly compensated active and highly compensated former employees with the greatest compensation in the current or any prior year are restricted such that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the Employee under a straight life annuity that is the Actuarial Equivalent of the sum of the Employee's Accrued Benefit.

**(c) Exception.** Subsection 6.11(b) shall not apply if: (1) after payment of the benefit to an Employee described in the preceding subsection, the value of Retirement System assets equals or exceeds one hundred ten percent (110%) of the value of current liabilities, as defined in Code Section 412(l)(7), (2) the value of the benefits for an Employee described above is less than one percent (1%) of the value of current liabilities before distribution, or (3) the value of the benefits payable under the Retirement System to an Employee described above does not exceed \$3,500.

**(d) Repayment Agreement.** An Employee's otherwise restricted benefit may be distributed in full to the affected Employee if before receiving the restricted amount, the Employee enters into a written agreement with the Board of Trustees to secure repayment to the Retirement System of the restricted amount. The restricted amount is the excess of the amounts distributed to the Employee (accumulated with reasonable interest) over the amounts that could have been distributed to the Employee under the straight life annuity described in

this Subsection 6.11 (accumulated with reasonable interest). The Employee may secure repayment of the restricted amount on distribution by:

- (1) Entering into an agreement for promptly depositing in escrow with an acceptable depository property having a fair market value equal to at least one hundred twenty-five percent (125%) of the restricted amount,
- (2) Providing a bank letter of credit in an amount equal to at least one hundred percent (100%) of the restricted amount, or
- (3) Posting a bond equal to at least one hundred percent (100%) of the restricted amount. If the Employee elects to post bond, the bond must be furnished by an insurance company, bonding company or other surety for federal bonds.

The escrow arrangement may provide that an Employee may withdraw amounts in excess of one hundred twenty-five percent (125%) of the restricted amount. If the market value of the property in an escrow account falls below one hundred ten percent (110%) of the remaining restricted amount, the Employee must deposit additional property to bring the value of the property held by the depository up to one hundred twenty-five percent (125%) of the restricted amount. The escrow arrangement may provide that Employee may have the right to receive any income from the property placed in escrow, subject to the Employee's obligation to deposit additional property' as set forth in the preceding sentence. A surety or bank may release any liability on a bond or letter of credit in excess of one hundred percent (100%) of the restricted amount. If the Board of Trustees certifies to the depository, surety or bank that the Employee (or the Employee's estate) is no longer obligated to repay any restricted amount, a depository may redeliver to the Employee any property held under an escrow agreement, and a surety or bank may release any liability on an Employee's bond or letter of credit.

## **ARTICLE VII**

### **DEFERRED RETIREMENT OPTION PLAN**

**7.1 Election.** In lieu of terminating employment and accepting a Retirement Allowance under Section 6.1, any Member of the Retirement System who is eligible to receive a Retirement Allowance under Section 6.1 may elect to participate in the Deferred Retirement Option Plan ("DROP") program and defer the receipt of benefits in accordance with the provisions of this Section. A Member may participate in the DROP program only once.

**7.2 Duration.** The duration of participation in the DROP shall be elected by the Member, but shall not exceed five (5) years. Any Member in DROP, as of June 19,



2003, will be given the one time opportunity to extend participation in DROP from three (3) to five (5) years from date of initial entry. Once a Member elects his period of participation in the DROP program, that period may not later be increased.

**7.3 Procedure.** The Member's application to participate in the DROP program must be made at least ninety (90) days before the Member's commencement of participation in the DROP program. The Member must specify his period of participation and complete such forms and other elections as the Pension Committee may require. The Member shall be required to make the same type of elections as he would be required had he Retired and such elections shall be irrevocable.

**7.4 Membership Ceases.** On the effective date of the Member's commencement of participation in the DROP program, the DROP participant's membership in the Retirement System shall terminate and no further Employee or Board contributions shall be payable to the Retirement System on behalf of the DROP participant. For purposes of this Section, the DROP participant's Average Compensation and Credited Service shall remain as they existed on the effective date of the DROP participant's commencement of participation in the DROP program.

**7.5 DROP Account.** The Retirement Allowance that would have been payable had the Member elected to cease employment and receive a Retirement Allowance shall be paid into the DROP participant's DROP account. The calculation of this Retirement Allowance shall be made without regard to and shall not include any pension supplement under Section 6.1(d). Payments into the DROP participant's DROP account shall not be subject to any cost of living adjustments; however, cost of living adjustments made after the DROP participant's termination of participation in the DROP program shall be made in accordance with the regular rules of the Retirement System. The DROP participant's DROP account shall be credited with interest as provided in Section 7.6. When the DROP participant terminates employment, the DROP participant's DROP benefits shall be payable as provided by Section 7.8.

#### **7.6 Interest on the DROP Account.**

**(a) Before July 1, 2008.** Each DROP participant's DROP account shall be credited with Credited Interest annually on the last day of each calendar year. Should any DROP participant or Beneficiary be entitled to a distribution of a DROP participant's DROP account, no Credited Interest shall be credited to the DROP account for the year in which the distribution is being made, unless it is made on the last day of the calendar year.

**(b) After June 30, 2008.** Each DROP participant's DROP account shall be credited with Credited Interest monthly only on the last day of each calendar month. Should any DROP participant or Beneficiary be entitled to a distribution of a DROP participant's DROP account, no Credited Interest shall be credited to the DROP account for the month in which the distribution is being made, unless the distribution is made on the last day of the calendar month.

**7.7 Fees or Charges.** The DROP participant's DROP account shall not be subject to any fees, charges, etc., of any kind for any purpose.

**7.8 Termination of Employment.** On termination of employment at the end of the specified period of participation or for any reason including Disability before the end of the specified period of his DROP participation, the Retirement System shall pay to the DROP participant in a lump sum an amount equal to the then balance of his DROP account. The DROP participant's Retirement Allowance benefits shall cease being paid into the DROP account and shall instead begin to be paid to the Retiree.

**7.9 Death.** If a DROP participant dies during the period of his participation in the DROP program, a lump sum payment equal to his DROP account balance shall be paid to his DROP Beneficiary (which may differ from his Beneficiary for other purposes of the Retirement System). In addition, normal survivor benefits payable to Beneficiaries of Retirees shall be payable.

**7.10 Employment After Drop Participation.** A DROP Participant may request to continue employment with the Board beyond his elected period of participation in the DROP program by reapplying with the Board. If the DROP participant is rehired by the Board, the DROP participant will receive a lump sum distribution of his DROP account balance as if he had Retired. For DROP participants rehired after April 20, 2005, the Retirement Allowance that had been paid into the DROP participant's DROP participation, shall be suspended while re-employed and the provisions of Section 6.6 shall be applicable.

## **ARTICLE VIII METHOD OF FINANCING**

**8.1 Trust.** All of the assets of the Retirement System shall be held in trust and shall be administered solely in the interest of the Retirement System's Members and Beneficiaries, and exclusively to provide benefits to the Members and their Beneficiaries in accordance with the Retirement System. Notwithstanding anything to the contrary, no contributions paid under the Retirement System may be returned to the Board except such assets as remain in the trust after the satisfaction of all liabilities under the Retirement System if it terminates in accordance with the provisions of Section 9.7. The funds in this Retirement System shall be used for no other purpose than to pay pensions to Employees under the Rules and Regulations adopted by the Board. These Rules and Regulations shall also serve as the trust document for the Retirement System.

### **8.2 Member's Contributions.**

**(a) Amount.** Each Member shall contribute each year to the Fund 4% of his Earnable Compensation.

**(b) Contributions Non-elective.** The deductions provided for in this Section shall be made notwithstanding that the minimum compensation provided for by the law shall be reduced thereby. As a condition of his employment with the Board, every Member shall be deemed to consent and agree to the deductions made and provided for in this Section. Payment of the Member's salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for compensation for the services rendered by such person during the period covered by such payment, except as to the benefits provided under these Rules and Regulations.

**(c) Repayment of Contributions.** In addition to the contributions deducted from compensation as provided above, any Member may repay to the Retirement System in a single lump sum an amount equal to the Accumulated Contribution he previously withdrew plus interest as provided in Section 5.7.

**(d) Maximum Contribution.** Any Member who has accumulated thirty-four (34) years, four (4) months and fifteen (15) days of Credited Service shall no longer be obligated to contribute to the Retirement System and shall be exempt from the contribution requirement of Section 8.2(a). In all other respects, the rights, obligations and status of such Member shall remain as provided for in the Rules and Regulations, as amended.

**(e) Pick-Up Contributions.** Notwithstanding any reference in these Rules and Regulations to Accumulated Contributions as Member or Employee contributions, effective January 1, 1996, and subject to the approval by the Internal Revenue Service of the treatment of such contributions as "pick-up contributions" within the meaning of Code Section 414(h)(2), the Board and all other employers contributing to this Retirement System shall pay the Accumulated Contributions on behalf of the Members of the Retirement System as an employer contribution to the Retirement System through a reduction of salary, an offset against future salary, or both. Members shall have no right to receive the Accumulated Contributions directly in lieu of contribution to the Retirement System.

### **8.3 Board Contributions.**

**(a) Held in Trust.** All contributions by the Board shall be held in trust for the Retirement System together with all earnings on Fund assets.

**(b) Annual Contributions.** On account of the Members there shall be paid annually by the Board to the trust a certain percentage of the Earnable Compensation which shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation.

**(c) Normal Cost.** On the basis of interest and of such mortality and other tables as shall be adopted by the Board of Trustees after consultation with the Retirement System's actuary, the Board of Trustees shall determine the uniform and constant percentage of the Earnable Compensation of each Member which, if contributed on the basis of Compensation of such new entrant throughout his entire period of active service, would be sufficient to provide for the payment of any benefit payable on his account not provided by his own contributions. The rate percentum so determined shall be known as the "Normal Cost" rate. The Normal Cost rate of contributions shall be determined after each valuation.

**(d) Accrued Liability Contribution Rate.** Immediately succeeding the first valuation, the actuary shall compute the percentage of the total annual Earnable Compensation of all Members which will be sufficient to liquidate the accrued liability for the Retirement System over a period so determined. The percentage so determined shall be known as the "Accrued Liability Contribution" rate.

**(e) Minimum Annual Contribution.** The total amount payable by the Board to the trust in each year on account of Members and beneficiaries shall be not less than a percentage of the total Earnable Compensation of all members during the preceding year equal to the sum of the Normal Cost rate and the Accrued Liability Contribution rate; provided, however, that the aggregate payment shall be sufficient, when combined with the amount in the Pension Accumulation Account, to provide the pensions and other benefits payable to Members and Beneficiaries during the year then current from the account.

**(f) Satisfaction of Accrued Liability.** The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the Pension Accumulation Account shall equal the present value, as actuarially computed and approved by the Board of Trustees, of the total liabilities chargeable to the account on account of all Members and Beneficiaries less the present value of the normal contributions to be received at the normal rate then in force on account of persons who are at that time Members.

**(g) Earnings and Gifts Credited to Trust.** All interest, dividend and income earned or realized on the funds or property of the Retirement System shall be credited to the Fund, and there shall also be credited to the Fund all gifts, bequests or devises of money or property made for the benefit of the Retirement System.

**(h) Member Contributions.** Notwithstanding Section (g) above, each Member's Accumulated Contributions account shall be credited annually with Credited Interest as provided for in these Rules and Regulations.

**8.4 Expenses.** All third party administration expenses of the Retirement System shall be paid by the Retirement System.

**8.5 Appropriations.** The Board shall appropriate out of its operating maintenance funds such amounts as shall be necessary to fund retirement benefits accrued as determined by the plan actuary. All third party administrative costs incurred in the operation of the Retirement System shall be paid for by the Retirement System except for the fees of outside legal counsel retained to assist Special Counsel of the Board, which fees shall be paid by the Board.

**8.6 Management of Funds.**

**(a) Board of Trustees' Investment Authority.** The Board of Trustees of the Fund shall have full power to invest and reinvest such funds, subject to all terms, conditions, limitations and restrictions imposed by law on the investments of trust funds. Subject to like terms, conditions, limitations and restrictions, the Board of Trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created under these Rules and Regulations shall have been invested. When investing such funds, the Board of Trustees shall exercise the judgment and care under the circumstances then prevailing which a reasonable individual of ordinary prudence, discretion and intelligence exercises in the management of like enterprises. The Board of Trustees shall monitor the operations of the funds and shall have all powers necessary for such purpose, including but not limited to the power:

- (1) to appoint or remove the custodian;
  - (2) to set the investment goals for the funds;
  - (3) to evaluate the performance of any investment manager;
- and
- (4) to employ one or more persons to render advice with respect to any of its responsibilities under the Retirement System.

The Board of Trustees may enter into an agreement with one or more investment managers and financial consultants who shall serve at the pleasure of the Board of Trustees. In such case where an investment manager is appointed, the Board of Trustees shall determine the portion of assets of the different funds which are to be allocated to, or managed by, such investment manager(s). An investment manager shall manage the investment and reinvestment of that portion of the assets of the funds which have been allocated to such investment manager in accordance with the investment policy as established by the Board of Trustees. The financial consultants, employed to give advice to the Board of Trustees for

this purpose, shall advise the Board of Trustees on the investment policy. An investment manager shall not have custody of any assets of the funds and shall have no responsibility with respect to the administration and operation of the Retirement System, the safekeeping of the assets of the funds, or the management of assets of the funds which have not been allocated to such investment manager.

**(b) Cash Reserves.** There shall be kept on deposit sufficient available cash for the purpose of meeting disbursements for annuities and other payments.

**(c) No Ownership in Fund.** Except as otherwise under these Rules and Regulations provided, no Member or Employee of the Board shall have any direct interest in the gains or profits of any investment made by the Retirement System, nor shall any member of the Board, as such, receive any pay or emolument for his services. No Member, Employee or fiduciary of the Retirement System shall, directly or indirectly, for himself, or as an agent, in any manner use the funds of the Retirement System, except to make such current and necessary payments as are authorized under the provisions of these Rules and Regulations.

**(d) Bonding.** The Board of Trustees shall prescribe which of its members and Board Employees shall be adequately bonded and in what amount, pursuant to regulations adopted by the Board of Trustees. The premiums of said bonds shall be paid by the Board.

**(e) Agents, Attorneys.** The fiduciaries of the Retirement System may execute any of the duties required of them by or through attorneys, agents, receivers or employees, and shall be entitled to the advice of counsel concerning all duties required; and the applicable fiduciary shall not be answerable for the default or misconduct of any such attorney, agent, or employee selected with reasonable care. To the extent legally permissible, the Pension Committee shall not be answerable for the exercise of any discretion or power under the Retirement System or for anything whatsoever in connection with the duties created in the Retirement System, except only for gross negligence, bad faith, and/or criminal misconduct. If a Trustee or a member of the Pension Committee believes it to be reasonably necessary to consult with counsel concerning any of that person's duties under the Retirement System, or if the person becomes involved in litigation on account of having received property owned by the Retirement System, then in either case the person's reasonable costs, expenses and reasonable attorney's fees shall be paid by the Board. The Board of Trustees may also provide, through the Retirement System's expenses, adequate insurance protection for its acts carried out in good faith.

## **ARTICLE IX GENERAL PROVISIONS**

**9.1 Assignments Prohibited.** The right of a person to a pension, an annuity or Retirement Allowance, to the return of contribution, the pension, annuity, or Retirement Allowance itself, death benefits, or any other right accrued or accruing to any person under the provisions of these Rules and Regulations shall not be assigned, and shall not be subject to execution, garnishment or attachment.

**9.2 Protection Against Fraud.** Whoever with intent to deceive or defraud the Retirement System, makes any false or untrue statements or reports or gives any false or untrue notices required under these Rules and Regulations or falsifies, or permits to be falsified, any record or records of this Retirement System, then, in addition to possible referral for criminal prosecution, the Pension Committee may impose such penalties as it determines, in its sole discretion, are appropriate, up to and including causing such individual to forfeit any benefits he may be entitled to receive from the Retirement System.

**9.3 Errors.** Should any error in the records, calculations, or payments be discovered that resulted in any Member or Beneficiary receiving from the Retirement System more or less than he would have been entitled to receive had the records, calculations, or payments been correct, then to the extent practicable, the Personnel Department shall correct such error retroactively as if such record, calculation or payment had originally been correct, in such manner that the Actuarial Equivalent of the benefit to which such Member or Beneficiary was correctly entitled shall be paid. If overpayment has occurred, the Personnel Department may in its discretion choose to remove the overpayment by reducing, rather than suspending, the payments to the individual.

**9.4 Repealing Other Rules Inconsistent.** All provisions of any rules and regulations inconsistent with the provisions of the Retirement System are repealed effective as of the date of this restatement of the Rules and Regulations.

**9.5 Invalidity of Any Section.** If any Section, Subsection, Paragraph or Clause of this Retirement System is declared to be invalid or contrary to applicable law for any reason, the fact of such invalidity or contradiction shall not affect any other provision.

**9.6 Amendment to Rules and Regulations.** These Rules and Regulations may be amended by the Board at any regular monthly meeting on the recommendation of the Pension Committee; however, no amendment shall be adopted that will reduce the then Accrued Benefits of Members or Beneficiaries covered by accumulated reserves, which reserves shall constitute a trust fund for the payment of such benefits.

**9.7 Termination of Retirement System.** If the Retirement System terminates or partially terminates or if there is a complete discontinuance of contributions thereto, the rights of all affected Employees to benefits accrued to the date of such termination or partial termination (to the extent funded as of such date) shall be nonforfeitable. On such termination of the Retirement System, the funds of the

Retirement System shall be allocated to members. If assets remain after providing each Member with one hundred percent (100%) of the present value of his or her Accrued Benefit up to the limits set forth in Section 6.1, the excess may be returned to the Board.

**9.8 Gender and Number.** The masculine pronoun shall include the feminine pronoun in all cases and the singular shall include the plural and vice versa in all cases as the context requires.

**9.9 Notice of Address and Missing Persons.** Each person entitled to benefits under the Rules and Regulations must file with the Personnel Department, in writing, his post office address and each change of post office address. Any communication, statement or notice addressed to such person at his latest reported post office address will be binding on him for all purposes of the Rules and Regulations and neither the Personnel Department, the Pension Committee, the Retirement System, nor the Board shall be obliged to search for or ascertain his whereabouts. If such person cannot be located, the Pension Committee may direct that such benefit and all further benefits with respect to such person shall be discontinued, all liability for the payment thereof shall terminate and the balance in such Member's Accumulated Contributions and/or Retirement Allowance shall be deemed a forfeiture. However, if the Member or Beneficiary subsequently reappears before the termination of the Retirement System, the Accumulated Contributions and/or Retirement Allowance that were due and payable and which such person missed shall be restored and the future benefits due such person shall be reinstated in full.



**ARTICLE X  
ADOPTION**

The above amended and restated Rules and Regulations of the Employees' Retirement System of the Sewerage and Water Board of New Orleans is executed this 21<sup>ST</sup> day of July, 2010 by the duly authorized undersigned representative of the Sewerage and Water Board of New Orleans to be effective July 21, 2010.

WITNESSES:

Sewerage and Water Board  
of New Orleans

By: \_\_\_\_\_  
Marcia St. Martin  
Executive Director

\_\_\_\_\_  
  
\_\_\_\_\_

## ACKNOWLEDGMENT

STATE OF LOUISIANA

PARISH OF ORLEANS

BE IT KNOWN, that on this \_\_\_\_ day of \_\_\_\_\_, 2010 before me, the undersigned authority, a duly commissioned and qualified Notary Public within and for the State of Louisiana, Parish of Orleans, personally came and appeared:

who, being duly sworn, in the presence of the undersigned competent witnesses, declared and acknowledged unto me, Notary, that she is the identical person who signed and executed the attached amended and restated Rules and Regulations of the Employees' Retirement System of the Sewerage and Water Board of New Orleans; that she executed said agreement as her own free and voluntary act and deed, in the capacities indicated, for the uses, purposes, intents and benefits therein expressed.

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_  
Marcia St. Martin  
Executive Director

\_\_\_\_\_

\_\_\_\_\_  
NOTARY  
My Commission is for Life.

## MEMBERS OF THE SEWERAGE AND WATER BOARD OF NEW ORLEANS

---

MAYOR MITCHELL J. LANDRIEU, PRESIDENT

---

TOMMIE VASSEL

---

JACQUELYN CLARKSON

---

JON JOHNSON

---

DR. BEVERLY WRIGHT

---

LOYCE P. WRIGHT

---

ARNIE FIELKOW

---

KAREN HENLEY-RAYMOND

---

FLORENCE W. SCHORNSTEIN

---

GLEN PILIE

---

ALAN ARNOLD

---

DR. GERALD WILLIAMS

**EMPLOYEE AND RETIREE MEMBERS OF THE BOARD OF TRUSTEES AND OF  
THE PENSION COMMITTEE OF THE  
SEWERAGE AND WATER BOARD OF NEW ORLEANS**

---

GERALD TILTON

---

WARREN LAWRENCE

---

JOHN WILSON

---

HAROLD HELLER